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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Report of the Second United Nations Conference to Review all Aspects of the Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

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ASPECTS OF THE SET OF MULTILATERALLY AGREED
EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL
OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 26 November 1990

Report of the Second United Nations Conference to Review all Aspects of the Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

Held at the Palais des Nations, Geneva
from 26 November to 7 December 1990

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INTRODUCTION

1. Pursuant to General Assembly resolution 41/167, the Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was convened at the Palais des Nations, Geneva, from 26 November to 7 December 1990. In accordance with the same resolution, the Intergovernmental Group of Experts on Restrictive Business Practices, at its ninth session (23-27 April 1990), served as the preparatory body for the Conference. (For the report of the Intergovernmental Group of Experts on its ninth session, see TD/B/1261 - TD/B/RBP/76).

2. In the course of the session, the Review Conference held six plenary meetings. This report gives a brief account of the proceedings of those meetings.

Opening statements

3. Speaking upon his election to the presidency of the Conference, the President observed that the world was now quite different from what it had been 10 years ago when the Set of Principles and Rules had been adopted, or even 5 years ago when the first Review Conference had been held. The past year, in particular, had seen very rapid changes in the international economy and there was now a greater and more widespread appreciation of the benefits of the free market and competition. At the same time, it was generally recognized that there must be a framework for the regulation of free competition. It would therefore be the task of the Second Review Conference to see how the Set of Principles and Rules could be implemented to meet the challenges of the 1990s and thus help all countries to move towards a system of free-market economies.

4. In his opening statement, the Secretary-General of UNCTAD stated that the Conference came at a time when the world economy was undergoing fundamental changes with respect to the competitive environment. The trend of "deregulation", initiated in the early 1980s in major developed countries, had now spread to a wide range of developed and developing countries. While developed countries had broadened the scope for the play of competitive forces - in particular as regards services - developing countries had adopted far-reaching reform programmes with greater emphasis on market forces to determine prices. These policies were also frequently accompanied by a greater opening of the economy to foreign competition, including the progressive removal of trade barriers and the relaxation of investment rules. Developments in countries in Eastern Europe had added further momentum to this trend, with several of the former centrally-planned economies deliberately switching to a market economy, and others adopting reforms aimed at making better use of market mechanisms.

5. Moreover, in the area of international trade, intensive efforts were being pursued in the Uruguay Round, where the negotiations encompassed proposals for the liberalization of trade in goods and services and for agreements on a number of competition-related issues such as TRIMS and TRIPS. In these areas, developing countries were pressing for results which would preserve their freedom of action to deal with RBPs and to establish international mechanisms to facilitate the elimination of anti-competitive

practices. Furthermore, the approaching deadline of 1992 for the completion of the Single European Market and the ensuing repercussions had begun to make a far-reaching impact on the competitivity of enterprises throughout the world. The creation of other trading blocs, such as the United States-Canada Free Trade Area, was having similar results. Enterprises from non-member countries, such as Japan, Switzerland or Sweden, had long sought to cross borders and to integrate or extend their activities into the emerging blocs. Firms originating from these blocs were striving to attain the "critical size" necessary for them to meet competititon in the emerging new markets. All these factors tended to foster the increasing competitiveness of enterprises on a global scale.

6. The case for competition was now widely accepted: it had the potential to act as a powerful incentive to enterprises to achieve maximum price/quality ratios, help accelerate technological progress, and generally work in the interests of consumer welfare. Crucial to realizing this potential, however, was the existence of a policy environment designed to ensure that firms actually competed and that they did so within the framework of appropriate "rules of the game" that were well defined and applied. Countries, therefore, needed to take urgent action at both national and international levels in a mutually reinforcing manner to promote and protect competition. Countries adopting market-oriented reforms were eager to adopt competition legislation and the necessary judicial and administrative procedures for implementing the control of restrictive business practices. This was fully in line with the Set of Principles and Rules which called for adoption and implementation of RBP legislation.

7. For a decade or so, developed countries in particular had insisted that this provision of the Set was essential in the implementation of the Principles and Rules. At present, as shown in the report by the secretariat on technical assistance (TD/RBP/CONF.3/4 and Corr.1), the UNCTAD secretariat was faced with an unprecedented number of requests from developing countries for technical assistance in the area of RBPs, as well as from countries in Eastern Europe. While the secretariat had provided a certain amount of technical assistance in the form of regional seminars for developing countries, these requests indicated an urgent need for advice at the national level in the drafting of competition legislation, for assistance in the necessary institution-building and for the training of officials in the actual control of restrictive business practices. This Review Conference was an important occasion for all countries to take stock of developments in this area, and for enhancing support for the UNCTAD secretariat's efforts through the provision of finance and expertise. Accordingly, the report proposed a number of initiatives at the national level, including seminars, advisory missions, training workshops and on-the-job training internships.

8. In addition to technical assistance, the Review Conference needed to tackle two specific areas that had been addressed in the Final Act of UNCTAD VII, namely improving transparency and defining consultation procedures in respect of RBPs. While these issues were already broadly covered in the Set, there was wide scope for improving the implementation of the provisions in these areas. The secretariat report on this subject (TD/RBP/CONF.3/3 and Add.1) reviewed the main issues in this regard and made a number of concrete proposals. On transparency, the report analysed the various types of

transparency, reviewed possibilities under the existing provisions of the Set and explored ways and means for improving the implementation of the various provisions related to the exchange of information, with a view to improving transparency in this area. One point made in the report was that exchange of information between RBP control authorities could be facilitated if it occurred between countries which did have RBP control legislation and which did apply competition policy. Improving transparency, therefore, depended to a great extent on adoption of RBP control legislation and on the existence of an administering authority in developing countries wishing to receive information from abroad. In turn, adopting RBP control legislation implied, for a great number of countries, familiarizing themselves with RBP issues, drafting legislation and the training of officials. As already explained, these efforts would be greatly facilitated by well-designed technical assistance, advisory and training programmes. In the first instance, developing countries had to build up the necessary expertise on competition issues, which would in turn facilitate closer contacts between competition authorities and pave the way for exchanges of information. Procedures could be envisaged for notification, exchanges of information and the co-ordination of action along the lines, for example, of the OECD Council recommendation on co-operation between member countries on RBPs affecting international trade. For the time being, however, the report suggested that an agreed standard information request form could be prepared. Such a form would allow the country requesting information to identify more easily the specific data it was seeking to obtain within the framework of its RBP legislation, and to formulate its request in a way which also facilitated compliance by the responding country.

9. The report also suggested the preparation of a questionnaire containing all relevant questions with respect to requests by the UNCTAD secretariat for information in the preparation of its reports on "Steps taken by States to comply with their commitments under the Set", as well as in the preparation of the Annual Report on Restrictive Business Practices. In addition, as a practical step towards the improvement of communications with RBP control authorities, the report contained a preliminary list of addresses of such authorities, along with a list of publicly available information which could be obtained from these authorities, upon request, by other States.

10. As regards the definition of consultation procedures, the report analysed the actual provisions of the Set and proposed that a standard consultation request form be agreed upon, in the same way as that proposed with respect to requests for information. It also suggested that a single form could be used both for information and for consultations. Attention should also be drawn in this respect to the OECD Council Recommendation just mentioned as a useful element for the work that lay ahead on consultation and conciliation procedures.

11. In conclusion, he said that there appeared to be a convergence of views on a number of essential points, just as there was general recognition of the far-reaching opportunities that were emerging for developing competition in the world economy and the international trading system, which augured well for the Review Conference.

12. The Chairman of the Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session (Sweden), introducing the report of the Intergovernmental Group (TD/B/1261-TD/B/RBP/76), drew attention to the agreed conclusions annexed to the report (annex I), as well as to the draft decision submitted by Algeria on behalf of the States members of the Group of 77 (annex III) and the draft recommendations proposed by the Netherlands on behalf of the States members of Group B (annex IV). He recalled that the provisional agenda and the provisional rules of procedure of the Conference had also been approved by the Intergovernmental Group. He was confident that the co-operation and good will shown by the participants in the Intergovernmental Group would continue to prevail at the Review Conference.

Chapter I

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES:

(a) REVIEW OF TEN YEARS OF APPLICATION AND IMPLEMENTATION OF THE SET;

(b) CONSIDERATION OF PROPOSALS FOR THE IMPROVEMENT AND FURTHER DEVELOPMENT OF THE SET, INCLUDING INTERNATIONAL CO-OPERATION IN THE FIELD OF CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(Agenda item 8)

13. For its consideration of agenda item 8, the Review Conference had before it the following documents:

"Proposals on transparency and consultation procedures in the field of restrictive business practices" - report by the UNCTAD secretariat (TD/RBP/CONF.3/3 and Add.1)

"Technical assistance, advisory and training programmes and restrictive business practices" - report by the UNCTAD secretariat (TD/RBP/CONF.3/4 and Corr.1)

"Preparations for a handbook on restrictive business practices legislation" - note by the UNCTAD secretariat (TD/RBP/CONF.3/5)

Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its ninth session (TD/B/1261-TD/B/RBP/76).

14. The spokesman for the Group of 77 (Philippines) said that one of the major tasks of this Conference was the strengthening of the commitments entered into by all parties when the Set of Principles and Rules had been adopted. The Group of 77 wished to reiterate its concern that, 10 years after the adoption of the Set, restrictive business practices continued to affect adversely international trade, in particular the trade and development of developing countries. Concrete measures were therefore necessary to eliminate or at least effectively control restrictive business practices. In contrast to the atmosphere of the first Review Conference, a fundamental change had taken place in the political will of countries to meet fully the commitments entered into upon the adoption of the Set. This political will, which had been apparent at the preparatory session of the Intergovernmental Group of Experts, had given his Group a new hope that the Conference would take concrete measures towards the effective implementation of the Set.

15. Elaborating on the concern of his Group over the inadequate implementation of the Set, he referred to the assessment made in chapter I of TD/B/RBP/69 and added that the subtlety and secrecy with which enterprises engaged in RBPs precluded the gathering of conclusive empirical evidence. However, he was convinced that enterprises continued to use RBPs in the area of trade in goods and services, as well as investment and technology. In this

respect the dominant role played by transnational corporations (TNCs) in the world economy was well known. The biggest TNCs had sales which exceeded the aggregate output of most developing countries. The largest 56 companies had sales ranging from $10 billion to $100 billion. Their importance as purchasers, manufacturers, suppliers and sellers of goods and services was such that they automatically acquired a dominant position of market power in most developing-country markets and in international transactions. These enterprises thus had an unequal bargaining power vis-à-vis not only the enterprises, but even the governments of many developing countries. It was therefore imperative that the solemn commitment of States to implement the Set be fully adhered to both at the international and at the national level.

16. As indicated in the statement of the Secretary-General of UNCTAD, the trend towards liberalization of markets from regulation and monopoly which had begun in developed countries had now embraced most developing countries. Many of them had had to implement stringent economic adjustment programmes as required by international financing institutions by decontrolling prices across the board, removing subsidies even on essential commodities, and by privatization of State enterprises. Furthermore, this trend was also visible in the recent economic reforms adopted in Eastern Europe and in the efforts leading to a Single European Market in 1992. The Group of 77 was concerned that dismantling of existing regulations might lead to a situation of "laissez-faire" where there would be no checks and balances for the control of RBPs. Should this happen, the paradox would be that competition would lead to no competition, resulting in monopoly to the detriment of consumers and social welfare. He added that, without prejudging the outcome of the multilateral trade negotiations (MTNs) in the Uruguay Round, the proposals to liberalize trade in services and to reach agreements on trade-related aspects of intellectual property rights (TRIPs), and trade-related investment measures (TRIMs) might lead to similar results unless concrete measures were taken in compliance with the Set of Principles and Rules. With regard to the so-called "grey area" trade restraints, such as voluntary export restraints (VERs) and orderly marketing arrangements (OMAs) which had arisen during the decade, his Group had time and again expressed its concern about these disguised forms of RBPs, in which collusion between governments and their national enterprises was apparent.

17. All these considerations were sufficient to indicate why the Group of 77 had reached the conclusion that the Set of Principles and Rules had not been adequately implemented and that this Conference must seriously consider the proposals of his Group, and those of others, for the improvement and further development of the Set. Although the Set was a good basis, it was not a perfect instrument and, hence, it needed further improvement and development. The proposals of the Group of 77 for such improvement were contained in the draft decision submitted by Algeria on behalf of the States members of the Group of 77 at the ninth session of the Intergovernmental Group of Experts on Restrictive Business Practices (cf. TD/B/1261, annex III). In summary, the proposals were as follows:

(a) The proposed amendments to the Set of Principles and Rules;

(b) Transparency;

(c) Consultation procedures;

(d) Special committee on RBPs;

(e) Technical assistance;

(f) A Third United Nations Conference to Review all Aspects of the Set of Principles and Rules.

18. With regard to specific amendments, he recalled that, at the time of the adoption of the Set, many States had accepted the fact that the Set provided the minimum standards and, therefore, further improvements should be made to it. This view had become even more valid as a result of the experience States had had during the 10 years following the adoption of the Set. It was proposed to repeal the exemption to enterprises of the same economic entity contained in paragraph D.3; to delete the footnote to paragraph D.4 concerning acts in abuse of a dominant position; to delete the expression "unduly" in the relevant provisions of the Set; and to specify that in section B.9 of the Set the exemption applied only to formal intergovernmental agreements.

19. Furthermore, it was proposed to strengthen the objectives of the Set by adding the following wording: "help accelerate and promote" in paragraph 2, "and efficiency" in subparagraph (c), and by adding a new subparagraph (d) to read "stimulation of investment and economic growth". The "Principles" in section C of the Set ought to be strengthened. Thus, it was proposed to add the following wording: in paragraph 1, "appropriate action should be taken by Governments in a mutually reinforcing manner ..."; in paragraph 2, "especially between Governments of developed and developing countries"; and in paragraph 7, "for the equitable application of the Set of Principles and Rules, States, particularly developed countries, should ensure that their enterprises do not engage in restrictive business practices adversely affecting the trade and development of developing countries, and ...".

20. Finally, under "Principles and rules for States", in Section E, paragraph 6, it was proposed to add, "adversely affecting international trade, particularly the trade and development of developing countries".

21. On the question of transparency, his Group was concerned that, as regulations, laws and other traditional barriers to trade were eliminated through trade liberalization, transparency in trade barriers would diminish correspondingly as RBPs increasingly became the main instrument of protection, especially since, as mentioned earlier, such practices were, by their very nature, subtle and secret. The proposal of his Group, therefore, sought to remedy this situation. In the course of the deliberations under this item, he intended to elaborate these proposals further.

22. With regard to consultation procedures as contained in section F.4 of the Set of Principles and Rules, the Group of 77 proposed that these procedures should be clearly defined to enable developing countries to identify appropriate corrective or preventive measures against RBPs. His Group was of the view that one of the reasons why the consultation procedures of the Set had not been utilized was that the precise steps to be followed by States wishing to consult other States on RBP issues had not been clearly defined. Rather than change the wording under provision F.4 of the Set, what was needed in this respect was more detailed application procedure for the consultations.

23. The Group of 77 had also proposed the creation of a special committee on restrictive business practices, to be assigned the functions enumerated in section G of the Set. His Group believed that those functions were appropriate to a committee of UNCTAD with a mandate to make recommendations to States.

24. As to technical assistance, with respect to the regulatory vacuum previously mentioned that was occurring in the economies of developing countries, technical assistance to such countries was imperative. This was one issue on which all regional groups agreed. He therefore hoped that the Review Conference could reach an agreement on the implementation of the technical assistance programme set out in the secretariat report (TD/RBP/CONF.3/4 and Corr.1).

25. Finally, with regard to a Third Review Conference in 1995, he emphasized that RBP control was an ongoing process and, therefore, the review of the Set should equally be dynamic. Hence, a third review conference was a proposal that should be acceptable to all regional groups.

26. The spokesman for Group B (Netherlands) said that the Second Review Conference was taking place under different conditions from those which had prevailed during the First Review in 1985. Since then, the European Economic Community had been enabled to participate fully in the Intergovernmental Group of Experts on a non-voting basis, reflecting the importance of its tasks in the field of competition policy. Among the developments since 1985, two specific factors were worth mentioning in connection with the review of all aspects of the Set: first, the changing approach of Governments towards regulation and the increasing reliance on market mechanisms; and, secondly, the increasing international commitment to controlling restrictive business practices through the enactment and enforcement of restrictive business practices laws. On each of these factors his Group wished to make some observations which it considered relevant to the review of the implementation of the Set and equally to three specific subjects to be discussed during this Conference, i.e. the issues of information and consultation and the necessity of providing technical assistance.

27. The changing attitude towards regulation had been prompted by the recognition - confirmed by experience - that failure was not confined to markets, but also to attributable Governments. Interventions by Governments through public ownership or other forms of regulation intended to correct real or perceived market failure appeared often to have had adverse consequences for the achievement of efficiency or to have been outdated by changes in technology. A striking example was the telecommunications industry where, through new technology, alternative networks had emerged to compete effectively with the existing system. Thus, a reappraisal of State regulation had become necessary. Experience with regulatory reform - or deregulation - showed that, once government regulations were removed in a particular sector, the existence of effective competition legislation was of paramount importance. Competition policy enforcement had to ensure that such regulations were not replaced by anti-competitive agreements such as agreements to fix prices, to restrict output or to allocate markets. In doing so, competition authorities might ensure that such old habits, which were permitted under the régime of regulation, were abandoned. Equally, an effective competition legislation was

needed to prevent previously regulated enterprises in a particular sector from trying to dominate the market through forms of anti-competitive behaviour such as restricting access to important facilities.

28. Another form of deregulation took place where limitations on the application of national competition laws were lifted: limitations which excluded certain sectors from the application of competition law, such as banking and insurance, transport and energy. The view was now emerging that, in principle, measures should be implemented in these sectors to promote competition. This underlined the need for competition legislation to be amended where necessary. A particular aspect of deregulation was the development taking place in those countries where the State-planned economies were being abandoned and where use of market forces was being introduced. In those countries the introduction of legislation on competition was being treated as a particularly urgent matter.

29. Concerning the factor of increasing international commitment to controlling restrictive business practices as a consequence of the growing deregulation and internationalization of markets, it was important to note that, particularly in the period since 1985, quite a number of Group B countries, through the application of their national competition legislation, had been dealing with issues in this field and appeared to be capable of effectively controlling restrictive business practices. There were new competition laws in, among other countries, Canada and Italy, a new merger regulation in the EEC and tougher criminal penalties in the United States. This line of conduct - local control by national competition authorities - showed that, even if practices originated abroad, these authorities were capable of taking action either because the enterprise behaviour effectively took place within their national markets or - in cases where the national law empowered them to do so - because the effect of this behaviour led to restraints in competition on their domestic markets. In thus controlling RBPs they contributed to implementing the Set.

30. Both factors pointed to the conclusion that the objective of defending competition rather than relying on action from outside was best served by adopting or improving restrictive business practices legislation and setting up effective institutions to apply such legislation. In this respect, Group B shared the view expressed by the representative of the Secretary-General of UNCTAD in his opening statement at the ninth session of the Intergovernmental Group of Experts, when he had observed that setting up legislation and effective procedures "was a well-established policy in practically all developed market-economy countries." In this context, as liberalization of markets took place and national competition laws and policies were established to an increasing extent also in developing countries, a more fruitful dialogue and exchange of views on national experiences on competition policies could be foreseen within the Intergovernmental Group. In short, Group B considered that the Set as it stood had an important part to play in the control of restrictive business practices and that the changing conditions under which it operated appeared to improve its utility.

31. Turning to agenda item 8 (b) - the consideration of proposals for the improvement and further development of the Set - he said that these proposals fell into three categories: information, consultation, and technical

assistance. In conformity with the agreed conclusions of the Intergovermental Group at its ninth session, the Conference would have to consider various proposals, first with regard to information and consultation and secondly on technical assistance.

32. The general position of Group B on the issue of information and consultation was that the main action to be undertaken was to guarantee that the exchange of information and appropriate consultations were being conducted in accordance with the Set, and that there was no need for changes in the wording of the Set.

33. In the provisions on information, the Set recognized that RBP laws could only be properly applied when relevant information was available, subject to suitable protection of information which was commercially confidential. Therefore, when adopting or amending RBP legislation, Governments should see to it that the law would provide for effective procedures to obtain information. Moreover, the Set also recommended that States should be willing to share information with other States. To this end, the Set made a distinction between publicly available information and other information. Group B welcomed the information given by the secretariat in its report (TD/RBP/CONF.3/3 and Add.1) on the different categories of publicly available information. As to the "other information" and the various proposals submitted in this context, the consideration of the content of these proposals would have to take into account the qualifications mentioned in section E.9 of the Set - i.e. that the supply of this "other information" should be necessary to the receiving interested State and could be given only to the extent consistent with the laws and established public policy of the State supplying the information. Detailed comments on these proposals would be given at a later stage during the Conference.

34. On consultations, Group B wished to reiterate the position it had taken at the ninth session of the Intergovernmental Group, i.e. that there was no justification for a new consultation procedure because the existing one had not been shown to be defective. The Conference should essentially concentrate its efforts on identifying elements that might assist member States in entering into and in holding consultations, in accordance with the Set.

35. He observed that all groups recognized the increasing importance of technical assistance in the area of RBP control and agreed that this activity should continue and develop. All groups would agree that, given the budgetary constraints that every country faced, it was important to ensure that resources were being used effectively. This was true for technical assistance already carried out in order to be able to evaluate what had been done. And it was equally true for the proposed programmes. Group B thought that these elements were not sufficiently present in the report prepared by the secretariat (TD/RBP/CONF.3/4 and Corr.1). Moreover, it should also be stressed that experience showed - with regard to technical assistance to East European countries as well as to developing countries - that technical assistance on a bilateral basis had been useful. This aspect should also be taken up when discussing technical assistance. Group B intended to submit a proposal on improved mechanisms for informal consultations.

36. The representative of China said that it was important to acknowledge at the outset of the Conference the contributions and progress made by the international community in its efforts to ensure the implementation of the Set of Principles and Rules as well as the role it had played in promoting the RBP controls in all countries. During these past 10 years, the UNCTAD secretariat had carried out extensive studies necessary for review and countries had taken an active part in all the sessions of the Intergovernmental Group of Experts. Moreover, Governments had adopted, to a varying extent, measures to control RBPs in keeping with their obligations under the Set, by drafting or improving legislation in this field and carrying out some technical assistance projects for the control of RBPs. He expressed appreciation to the UNCTAD secretariat, UNDP, ESCAP, the United Nations Centre on Transnational Corporations and other relevant international agencies as well as countries such as France, Germany, Japan, the Soviet Union and Sweden for their contribution over the past 10 years to China's efforts in formulating RBP legislation and strengthening RBP controls.

37. Considering its overall objectives, however, he believed that the Set had not been implemented in an earnest, effective and full manner over the past 10 years. The decade following its adoption had witnessed a slump in the growth of the world economy and trade and a rise in trade protectionism. In an effort to free themselves from economic hardships, some major developed market-economy countries had resorted increasingly to trade protective measures, including RBPs as a principal non-tariff barrier measure. This had seriously undermined the development of the world economy and compounded in particular the difficulties facing developing countries in the development of their economies and trade. Against such an unfavourable background to international trade, effective international measures aimed at controlling RBPs and the international co-operation in this area had proved to be woefully inadequate.

38. Although the basic elements of the Set remained valid, the Set was the product of compromise on all sides, with many areas still left undefined. In view of the many changes that had occurred in the world economy, including the regional integration movement, technological development, expansion in services, as well as many other variables, there should be room for amending and improving the Set. In this connection, the draft decision and draft proposal submitted to this Conference by the Group of 77 and Group B at the ninth session of the Intergovernmental Group of Experts were constructive. Moreover, his delegation supported in principle the proposals outlined in the statement by the spokesman for the Group of 77, including for the revision of the Set itself. His delegation also had some concrete proposals to make on the implementation and improvement of the Set, as follows:

(a) While the reasons for the failure to implement fully and effectively the Set were complex and multifaceted, one major reason was that the Set was not legally binding. In adopting the Set, consideration had been given to this issue but it had been left for the future review conference to decide on it. He recalled in this connection General Assembly resolution 33/153, which required a decision on the legal character of the principles and rules.

(b) There were many difficulties in implementation because the Set contained ambiguous elements which gave rise to different interpretations and even serious controversy. Issues of grey-area trade restriction such as VERs, OMAs and RBPs in transactions involving transnational corporations were of particular concern.

(c) Technical assistance, advisory service and training constituted important aspects of the implementation of the Set. Most developing countries lacked legislation and experience in the field of controlling RBPs and urgently needed help. The list of countries requesting technical assistance given in TD/RBP/CONF.3/4 showed amply the urgent need for technical assistance. He agreed in principle with the suggestions of the UNCTAD secretariat concerning the framework of technical assistance, and hoped that the international institutions and developed countries would adopt positive measures so that meaningful activities could proceed more smoothly.

(d) In view of the complexity and importance of work concerning the Set, the Intergovernmental Group, which was the institutional machinery for the review of its implementation, had statutory limitations, making it difficult to fulfil its important task. Therefore, the issue of upgrading the present Intergovermental Group was worth serious consideration at the current Review Conference. He supported the proposal of the Group of 77 to create a special committee for this purpose.

(e) China considered that consultations on the implementation of the Set had not been conducted as fully as was possible in the past and should be improved. However, consultations should not interfere with, or otherwise divert attention from, the other substantive aspects on the agenda of the Intergovernmental Group or the special committee as the case might be. The forms of consultation should be flexible and not necessarily be restricted to one particular form.

(f) The issue of transparency was also important. Most of the transactions within and among TNCs were carried out secretly. As international trade became more liberalized, the protectionist measures of the developed countries were becoming more difficult to identify. This had caused a deterioration in transparency in RBPs and created more difficulties in the control of RBPs at the international level. Therefore, the international community should adopt further measures to increase the exchange of information and registration so as to ensure effective control of RBPs.

(g) On the question of the future review conferences on the Set, he believed that the third Conference should be held in 1995, as proposed by the Group of 77. At the same time, he considered that, so long as RBPs existed, reviews should be conducted on a regular basis. He hoped that the comprehensive review at the United Nations level would be regularized.

39. The representative of Ecuador, expressing full support for the statement of the Group of 77, said that her country did not currently have RBP control legislation, although this issue was considered to be of the highest importance and her Government was considering the adoption of appropriate legislation and the setting up of an administrative body. For this reason, Ecuador was requesting technical assistance, and advisory and training facilities from UNCTAD. She was well aware of the financial situation with respect to technical assistance and therefore called on developed countries to reinforce their activities and financial support in this area. As countries liberalized markets and privatized State enterprises, it was increasingly necessary to ensure that RBPs would not distort emerging competition. In order to give RBPs the importance they deserved, her delegation supported the

idea of creating an UNCTAD committee on RBPs, to enable RBPs to be dealt with in the same conditions as the other issues debated in UNCTAD. The issue of RBPs was also considered to be of the utmost importance in the Andean Group, where decision 230 was being renegotiated with a view to protecting competition at the subregional level and preventing the harm caused by dumping, subsidies and other modalities of unfair competition. For this reason, she emphasized yet again the importance which her country attached to the implementation of technical assistance activities, as well as to transparency, consultations and Ecuador's support for the updating of the Set of Principles and Rules.

40. The representative of Indonesia said that, 10 years after the adoption of the Set, restrictive business practices continued to adversely affect world trade, particularly the trade and development of developing countries. In support of the statement made by the spokesman for the Group of 77, he said that his delegation wished to see the proposed improvements added to the proposals submitted by the Group of 77 at the ninth session of the Intergovernmental Group.

41. He stressed the importance of the Set at a time when fundamental changes were taking place in the world economy, and observed that lack of adequate attention to the RBP issues could jeopardize the efforts to create a more liberalized trading system, as envisaged in the Uruguay Round of multilateral trade negotiations. Under current conditions in the world economy no country could expect to achieve meaningful growth without depending on its exports as an engine of growth. In this respect, his country had introduced several packages of economic and administrative reform since 1985, which had resulted in deregulation, particularly in the field of trade. The objective of these measures was to reduce the high-cost economy, thus ensuring economic efficiency, by broadening the industrial base, increasing national revenues through non-oil and gas exports, mobilizing capital for investment and creating new employment.

42. The Government was concerned, however, that enterprises might engage in RBPs after deregulation measures had been adopted. It was, therefore, of the utmost importance that immediate action should be taken to ensure that RBPs did not hamper the development and growth of developing countries, particularly those which had embarked on a quest to liberalize markets from regulation and monopoly. In this connection, the proposals of the Group of 77 for improving and further developing the Set embodied the minimum that his country would have liked to see. He stressed among other things that a new subparagraph should be added to section A of the Set concerning stimulation of investment and economic growth, and that improved transparency and consultation procedures should be embodied in the Set. In order to assist developing countries in their efforts to implement the Set, it was necessary to provide various kinds of technical assistance, and he welcomed the possibility of hosting a technical assistance programme in Indonesia.

43. The representative of Poland stated that since the beginning of 1990 the Polish Government had stabilized the economy and initiated crucial changes in the economic system. These had been based mainly on demonopolization, privatization and liberalization of external trade. She recalled that, under the centrally-planned system, the authorities had set up monopolies and deliberately eliminated small and medium-size enterprises. As a result there

were high concentration ratios in almost all fields of economic activity. At the same time, most Polish enterprises were relatively small and weak by international standards, whereas in some branches - for example, in light industry - they were unusually big. Her country was the first post-communist country to set up an Antimonopoly Office as an independent government agency. The Government was in the process of dissolving the existing State monopolies and was trying to foster a competitive open economy. The first task was to split up all multi-plant enterprises which had been set up in the past for the implementation of the central planning system. This process of splitting up was based on the underlying economic criterion of competitive-market effectiveness. However, it had been found that such splitting up was not sufficient for the development of competition. The Government had become convinced that the behaviour of State enterprises could not be changed without privatization, and the process had already started. The Antimonopoly Office was actively involved in ownership changes to ensure that State monopolies were not changed into private ones, with the result that the Antimonopoly Office was not so much absorbed by mergers control as were its counterparts in Western countries. She hoped that Polish experience in antimonopoly activity was a good basis for co-operation with other post-communist countries. The Antimonopoly Office was ready to organize a seminar for these countries in Warsaw in May 1991.

44. She explained that the antimonopoly law prohibited restrictive agreements, required notification prior to mergers and transfer of ownership, authorizing their prohibition if they threatened competition, and allowed the splitting of dominant enterprises that permanently restricted competition or conditions for its existence. The law enumerated different types of prohibited monopolistic practices. The first group referred to the practices which were considered monopolistic, irrespective of the market power of the undertakings concerned. The second group referred to certain agreements of a cartel type which restrained competition by fixing prices, dividing markets, limiting production and eliminating competitors from the market. These agreements were also illegal, irrespective of the market power of the parties. The third group referred to abuses of a dominant position. Dominant position occurred when a firm did not face "substantial competition". The dominance might be indicated by a 30 per cent market share. All these practices were forbidden unless they were justified by the conditions of the economic activity in question, which meant that the "rule of reason" had been included in the law. The fourth group consisted of acts which were unconditionally forbidden if they were practised by monopolists. These acts referred to various aspects of pricing policies.

45. She added that the antimonopoly law was enforced by the Antimonopoly Office, together with its regional branches, which was subordinated to the Council of Ministers. The President of the Office was appointed and recalled by the Prime Minister. Violation of the Law was severely penalized. Both the firms and their managers might be penalized financially. The fines were paid to the State budget. All decisions of the Antimonopoly Office could be appealed against in the Antimonopoly Court within two weeks from receipt of such a decision. Finally, the Polish antimonopoly law and policy were fully consistent with the Set of Principles and Rules.

46. The representative of the Republic of Korea said that, since adoption of the Set by the General Assembly, a rapidly increasing number of countries had adopted RBP control legislation and the consensus to control RBPs had spread worldwide. In general, international efforts to control RBPs had proved to be reasonably satisfactory. His country had responded immediately after adoption of the Set by introducing the Act for Monopoly Regulation and Fair Trade and had started a systematic control of anti-competitive and unfair business conduct. Furthermore, through revision of the Act in 1986 and 1990, measures were introduced to deal with the concentration of economic power, while the organization and administrative power of the Fair Trade Commission had been strengthened. At the same time, the Korean market had been opened up steadily over the past 10 years and government regulations such as business licensing had been abolished in a number of industries. As a result, it was apparent that a healthy climate had been created for private enterprises to pursue fair competition under an open market structure.

47. He added that, owing to changes in the world economic environment, additional efforts needed to be exerted at the international level. Compared to the rapid progress in GATT and other forums which gradually reduced the impact of governmental barriers to trade, international co-operation for the control of RBPs had proved to be insufficient. It was highly important therefore to prepare a more concrete and effective programme of action during this Conference to enhance international co-operation in this area. He underlined in particular the need for increased information and technical assistance.

48. There was also a need to enhance and improve transparency in the area of controlling RBPs. While transparency of governmental barriers to trade had progressed at a more or less satisfactory level, the existing possibilities under the Set to uncover non-governmental practices had not been fully utilized. Many developing countries were anticipating the accelerated opening of their domestic markets as a result of the ongoing Uruguay Round negotiations, and these countries were deeply concerned about the possibility that numerous firms from developed countries would rush into their markets and engage in many unfair business practices. In this regard, his Government endorsed, in principle, the idea that an international scheme should be devised to control RBPs in international transactions more effectively, as a measure to complement the opening of markets in developing countries.

49. He also commented on the proposals which Group B and the Group of 77 had placed before the Conference. Regarding those of Group B, he gave full support to the argument that both multilateral and bilateral technical assistance on RBP control issues should be encouraged. Looking back on his country's experience of introducing RBP legislation and enhancing it, he could see that technical co-operation from international organizations such as UNCTAD and from developed countries had been very useful. During the past 10 years, the various international meetings on antitrust or RBP control, including the IGE meetings and seminars held by UNCTAD, had provided his country with good advice which had been instrumental in the efficient enforcement and improvement of the fair trade policy in the Republic of Korea. He stressed that his country was more than willing to share with other countries its experience in successfully managing its economic transformation and in administering fair trade policy. In this connection, his country was interested in preparing an appropriate programme for technical co-operation

with UNCTAD in 1991. He also supported the idea that improved mechanisms for informal discussions and exchange of views among experts, pursuant to sections C.4 and G.3 of the Set should be developed for future meetings of the Intergovermental Group of Experts. To meet the rising demand for technical assistance, he felt that developed countries were in a better position to provide more help in this regard.

50. He stated that his country fully supported the proposals by the Group of 77. However, the issues should be approached with care to make the Conference a productive one. First, since the Set was in the form of a recommendation and was not legally binding, amendment of the provisions of the Set should receive the consensus of the groups participating in the Conference, which was vital for the effective enforcement of the Set. Secondly, he pointed out that the Set had already created an Intergovernmental Group of Experts and a Review Conference as international bodies for controlling RBPs and had given certain duties to the UNCTAD secretariat in this regard. Top priority, therefore, should be given to the full utilization of those bodies, and the possibility of establishing a special committee should be considered at a later stage.

51. The representative of Kenya, expressing support for the statement made by the spokeman for the Group of 77, said that 10 years after adoption of the Set the incidence of RBPs had actually increased. Moreover, the consensus that had brought success in 1980 had withered away in the subsequent years to the extent that the 1985 Review Conference had ended in a failure. Unfortunately, this negative trend had occurred at a time when many developing countries, engaged in serious efforts to liberalize their economies, needed to check the proliferation of RBPs by enterprises that might take advantage of the situation to capture market shares through unfair means. The attitude of some developed countries, in which some of the very damaging RBPs originated, was a matter of added concern. This was reflected in their proposals to liberalize trade in services and to establish agreements on trade-related investment measures (TRIMs) and trade-related intellectual property rights (TRIPs) in the context of the Uruguay Round of multilateral trade negotiations. Without prejudging the outcome of the Round, it went without saying that the results in these areas would have an impact on the competitive environment in developing countries and therefore it was very important that the Set, which was the only international instrument that existed for the control of RBPs, be strengthened and made effective.

52. He stated that his country had already taken measures to implement the Set. In 1989, the Kenya Legislation for the Control of RBPs had come into effect. Immediately, his country had sought assistance in the training of officials to enforce the competition law. He expressed appreciation to the German Government, which had assisted in training two officials at the Federal Cartel Office. In January 1990, an RBP Seminar had been held in Nairobi thanks to the assistance of the United States, the United Kingdom, the EEC and the Nordic countries. A further two-day Seminar had been held in Nairobi for the officials involved in the enforcement of the Legislation in September 1990, again with assistance from the United States and the United Kingdom in both funding and the provision of resource personnel. The United Kingdom had agreed to train one of his country's officials in London in 1991. He urged other countries to follow this example and to assist developing countries engaged in liberalizing their economies so that competition could be enhanced in their countries.

53. He described the difficulties which the Competition Authority faced in conducting investigations in cases involving collusive tendering. In the case of mergers and take-overs, the Authority was able to take appropriate decisions. Surveys so far carried out by the Authority had revealed that nearly all RBPs stipulated in section D, paragraphs 3 and 4, of the Set were being practised by various enterprises operating in the country. The violations were being committed by both multinational corporations and local companies in the areas of both vertical and horizontal restraints. The tactics used made prosecution difficult for lack of evidence.

54. In the short time since the Legislation had been in force, his country had detected all manner of RBPs. The capacity to control RBPs would be enhanced if there were improved transparency and consultation procedures, as well as information-gathering. In this regard, he supported the views expressed on behalf of the Group of 77 and also drew attention to the suggestion made by the secretariat in its report (TD/RBP/CONF.3/3 and Add.1).

55. He observed that, in the recent past, the trend in transnational corporations had been to merge. This might have some relationship with what was happening in the global market. Trading blocs had been created at the global level and it was possible that the mergers were meant to create larger and more efficient enterprises in order to be able to compete with other large organizations within the trading blocs. Nevertheless, whereas RBPs were prohibited within the various trading blocs, they would almost certainly be practised in the developing countries to the detriment of the process of competition and economic development in those countries. Concerted action by all countries was therefore required in order to curb the use of such RBPs.

56. The representative of Colombia pointed out that when the Set had been adopted 10 years ago, the economies of developing countries, including those of most Latin American countries, had been closed economies, in which State intervention in the allocation of resources had been important. During the decade, the level of protection in these countries had diminished as a larger number of countries adopted open-door policies, and today in Latin America protectionism had become the exception. The liberalization of markets had revealed a series of imperfections that were incompatible with the general principle of competition. As economies were liberalized the Set of Principles and Rules had shown its usefulness, but at the same time its shortcomings had become apparent.

57. In this context, the dismantling of quantitative restrictions in Colombia had led to the adoption of antidumping and countervailing duty statutes, and the beginning of revision of antimonopoly legislation. It should also be noted that, at the level of the Andean Group, the Presidents of the five countries in the Galapagos Declaration of 1989 pointed to the necessity of adopting policies promoting free competition in order to consolidate the Andean economic area. This, inter alia, had led to the revision of decision 230 dealing with restrictive and unfair trade practices at the subregional level. In the preparation and revision of all these rules, the Set had served as an important, but insufficient, reference. For this reason, she strongly supported the statement of the Group of 77. While she agreed that domestic RBP legislation was necessary for the control of such factors, since the Set was only recommendatory such legislation should be complemented with a multilateral consultations mechanism which would ensure coherence among

national competitive policies. It was therefore important to improve transparency and to define clear consultation procedures. Her delegation also supported - and talled for greater efforts with respect to - technical assistance and training, and indicated that Colombia was willing to host the seminar on RBPs which, owing to internal circumstances which had now fortunately been overcome, had not been able to take place in 1989. Finally, she expressed her delegation's support for a third Review Conference in 1995.

58. The representative of Sri Lanka stated that legislation on restrictive business practices in his country had been in effect for only three years. Sri Lanka was beset by many economic problems but his Government firmly believed in the open economic policies that had been launched 11 years ago. These policies had been further strengthened by liberalization of freights, by the privatization of State sector organizations and by the introduction of the Industrial Promotion Bill which had been passed by Parliament in October 1990 with the object of creating competitiveness and promoting an export-oriented industry. At times, however, market forces could lead to concentration of market power. There was a need therefore for a legal framework to ensure that market forces would not contrive their own destruction. These objectives were to be achieved through the creation of the Fair Trading Commission of Sri Lanka, which applied the principles laid down in the Set of Principles and Rules. Hence, the Fair Trading Commission had to act with vigilance to identify and control monopolies, mergers and restrictive business practices that would operate against the public interest. While this was a new body, which had been in existence for only three years, he believed that in the coming years its activities would increase greatly.

59. So far the Commission had had the opportunity of investigating three monopoly situations in the supply of products manufactured in Sri Lanka. The firms connected with the supply of these products had market shares exceeding 50 per cent. However, the Sri Lankan legislation did not prohibit monopolies per se, and no evidence had been found to support the charge that these firms had acted against the public interest. Several anti-competitive practices reported to the Commission had also been investigated. In one instance, a service organization having a dominant position in the market had refused to comply with the notice issued under the Act calling for information, and the organization had been prosecuted for non-compliance. The Court decision on the subject was still pending.

60. The Commission also extended the scope of its activities to the field of international trade and would have to work in close collaboration with national government agencies, non-governmental organizations and restrictive business practices authorities in other countries. In this respect, he noted the importance of the results of transparency and consultative procedures. In fact, one of the proposals put forward by Sri Lanka at the ninth session of the Intergovernmental Group of Experts regarding the improvement of the coverage of the Set related to the issue of transparency. The amendment proposed to paragraph 6 of section E of the Set was meant to seek the active support of the Governments of countries in which parent companies of TNCs were located, whenever it was not possible for developing countries to obtain information from TNCs operating within their territory. He stressed the need to establish a public registration system of all RBPs and to make these registers accessible to foreign trade partners. He proposed a system of notification of such information to a centralized world registry.

61. With respect to the consultation procedures as spelt out in the Set, he noted that they had not been used despite repeated requests to take advantage of the facilities provided during the sessions of the Intergovernmental Group of Experts. In his view, unless the developing countries were in a position to detect, investigate and control RBPs adversely affecting their trade and development, the consultation procedures contained in the Set would be of no use to them.

62. With respect to technical assistance, while deeply appreciating the contributions made by donor countries, he invited other developed countries capable of providing funds to follow suit without further delay. He strongly supported the action plan proposed in paragraphs 71 and 72 of the secretariat report on technical assistance (TD/RBP/CONF.3/4). He emphasized that the Group of 77 position could be further strengthened by implementation and application of the Set by the member States.

63. The representative of Romania considered that the Review Conference was of particular significance at a time when sustained efforts were being made to liberalize international trade, to ensure free competition, including in the Eastern European countries now in the process of transition to market economies, and to promote international trade and development, particularly of the developing countries. The growing interdependence among the economies and their greater compatibility resulting from the process of reforms and structural adjustments created a new basis for implementing the control of restrictive business practices.

64. He shared the view of the spokesman for the Group of 77 and other speakers that the main objectives of the Set had not yet been fully attained. Owing to the persistence of restrictive business practices at the micro-economic level adversely affecting international trade, and to the lack of specific legislation at the national level, such practices had an impact, particularly on the economies which were less prepared to cope with international competition under the current economic conditions. Moreover, the mergers and take-overs taking place were limiting competition in the market. Therefore, it was of the utmost importance that the Conference should adopt measures aimed at increasing international commitment on the control of restrictive business practices.

65. He described the application of the Set in his country before and after the dismantling of the State monopoly in the field of foreign trade and in the financial and banking system, to ensure autonomy and free competition among economic agents. His Government was envisaging the privatization of at least 50 per cent of the economy, to be achieved in the next three years. Also, in November 1990, the Government had begun to liberalize prices with a view to decreasing and eliminating State intervention in the economy. All these measures were enlarging the coverage and application of the Set in Romania. The laws adopted up to now, introducing the economic and financial reforms, were incorporating the main provisions of the Set. However, a specific detailed legislation in this field was to be enacted by the Parliament.

66. It was obvious that the efficiency of the Set should be increased. In this respect, the measures proposed by the Group of 77, Group B as well as other member States constituted a constructive basis for conducting further negotiations. Greater transparency should be ensured, as well as a wider

exchange of information in the field of restrictive business practices. The mechanism of consultations at bilateral and multilateral levels should be improved as well. He also thought it would be useful to examine the possibility of setting up a permanent body in UNCTAD to deal with RBPs and of convening the Third Review Conference in 1995.

67. Finally, recalling the opening statement made by the Secretary-General of UNCTAD concerning the significant number of developing countries requesting technical assistance, he underlined the interest of his country in receiving UNCTAD's assistance to formulate legislation on RBPs and to train the personnel for its application. He also hoped to receive assistance from the developed countries and from international organizations, including UNDP.

68. The spokesman for Group B (Netherlands), referring in particular to item 8 (a), stated that events since the adoption of the Set, and particularly those of the last several years, had demonstrated repeatedly the value of the principled consensus embodied in the Set, as governments in all groups had recognized the vital importance of competition and market forces as the best foundation of economic prosperity and development. As indicated by the Secretary-General in his opening address, State after State had turned from government regulation - and, in some States, management - of the economy to regulatory reform, including deregulation and the privatization and demonopolization of State-owned enterprises, in order to provide a more efficient economic structure. States were achieving these goals by making better use of market signals and promoting entrepreneurial initiative and optimizing the contributions to consumer welfare of the public and private sectors.

69. As these reforms occurred, States had also recognized that the competition policy principles of the Set were vital to the development and maintenance of the competitive markets that the reforms were meant to create. More and more States in all groups had come to understand that sound competition laws and effective and vigorous enforcement of those laws were tools that governments must use to ensure that markets became and remained competitive.

70. It had been noted on many occasions that States members of Group B had adopted or improved their RBP legislation in conformity with the spirit of the Set. There was no need to repeat the details of those actions. Also, his Group's discussion of the implementation of the Set during the ninth session of the Intergovernmental Group of Experts were to be found in paragraphs 18-21 and 39-45 of the report of that session. Moreover, it was especially encouraging to note that an increasing number of developing and Eastern European countries were following the Set's principles in developing their own RBP legislation. Indeed, the number of countries that had adopted and were enforcing RBP laws in conformity with the Set had grown immensely over the past 10 years.

71. Of course, as the Set emphasized, RBP control was an ongoing process. One could not simply enact RBP control legislation and expect RBPs to disappear. All States had adopted criminal laws, yet crime still existed. This did not mean that the criminal codes had failed. On the contrary, as many Group B countries had discovered, the details of RBP control laws and techniques not only must be vigorously enforced, but also must be re-evaluated

from time to time in order to deal with changing economic conditions. In this context, Group B considered that, in one respect, some provisions of the Set could be put to better use. In 1980, Group B had hoped that one of the results of establishing the Intergovernmental Group would be to initiate regular exchanges of views on substantive competition policy issues among the RBP experts of the States members of UNCTAD. While in the course of time the usefulness of such exchanges had been gradually recognized, the amount of time devoted to disputes over the wording of concluding documents at sessions of the Group was not commensurate with the functions of an expert group. For this reason, on this tenth anniversary of the Set, Group B wished to reaffirm its strong belief in the value of the substantive competition principles embodied in the Set, which had stood the test of time better than could have been imagined in 1980.

72. Group B did not therefore believe that the Set needed improvement, but rather that it needed to be effectively implemented. It was somewhat disappointing to find that, while criticisms were levelled that the Set's provisions were inadequate, and that increasing resort was allegedly being had to RBPs, such little use was being made of the Set's provisions. As had been demonstrated in some of the country statements that discussed the difficulties countries were facing in enforcing new RBP legislation, the Conference efforts would be better directed towards enhancing the impact of the Set. Group B would propose in this regard that the Intergovernmental Group mechanism itself should be strengthened, not by changing it into a politically-oriented special committee - as some groups had again proposed - but by improving the informal multilateral consultations mechanism to ensure that the experts attending the Intergovernmental Group meetings had a meaningful opportunity to discuss the practical implementation of the RBP control principles set forth in the Set. Such a result would be a fitting way to commemorate the tenth anniversary of the Set and would go far toward ensuring the Set's continued utility to members of all regional groups. Group B would at a later stage suggest topics to be discussed in the informal multilateral consultations to be held at the tenth session of the Group.

73. Finally, the increasing appreciation of the importance of RBP control had increased the demand for technical assistance in this area. As TD/RBP/CONF.3/4 demonstrated, Group B members had provided a significant and increasing amount of such assistance over the past 10 years, on both a bilateral and multilateral basis. Group B considered this to be a particularly valuable contribution of the Set and would continue to provide technical assistance in the years to come.

74. The representative of the Union of Soviet Socialist Republics said that the use of restricted business practices on world markets was damaging for all countries, and efforts to eliminate RBPs must therefore involve the international community as a whole.

75. With regard to the implementation of the Set of Principles and Rules, the results achieved were uneven. Several of the basic goals of the Set had not been attained, and RBPs continued to be widely used. Several States were consciously disregarding RBPs, and this practice replaced official protectionism. One area in particular where the provisions of the Set had not been satisfactorily implemented concerned transparency. With regard to national legislation, progress had been made, but national legislation on its

own was not enough and must be combined with active international co-operation. Finally, with regard to implementation, the lack of effectiveness of the Set resulted not from the inadequacy of the Set's provisions but from the inadequate use of those provisions. What was needed was political will on the part of all concerned, and the Soviet Union was ready to show such will.

76. The Soviet Union's approach to the Set had changed. Previously, most of the country's foreign trade had been based on intergovernmental agreements, which did not fall within the scope of the Set. Now, however, all enterprises were entitled to engage in foreign trade in their own right, and the "new participants" in trade already accounted for almost 10 per cent of foreign trade. The enterprises concerned must be covered by the Set, and the Soviet Union would henceforth be taking an active interest in the implementation of the Set's provisions.

77. The second factor underlying the change in the Soviet Union's approach to the Set concerned the move towards a market economy and free competition in the country. In that connection, measures were being taken to demonopolize the national economy and to provide legal protection for producers and consumers. An Anti-monopoly Committee would be set up under the Council of Ministers of the USSR, and similar bodies would be set up in the union republics (in Russia such a Committee had already been set up).

78. Demonopolization measures were also being introduced in the field of foreign trade, and these measures took extensive account of the provisions of the Set. Such measures would include removing State foreign trade combines from the direct tutelage of ministries and turning them into joint-stock companies, ensuring equal economic conditions for all exporters, setting up voluntary anti-monopoly associations in the field of foreign trade, and introducing a nation-wide system of foreign trade information. In March 1989, a decision had been taken on the use of penalties against exporters or importers found to have engaged in unfair competition or restrictive business practices. The penalties included prohibition to carry out a specific contract or to engage in foreign trade for a specified period, and such penalties had already been applied in a number of cases.

79. The Soviet Union would be supplying the UNCTAD secretariat with information on national legislation in force or under preparation as soon as possible. However, the existing national legislation was still poorly developed, and the Soviet Union would be extremely interested in technical assistance in that respect. For its part, the Soviet Union participated in technical assistance projects for developing countries to the extent its resources allowed. For example, a seminar for Asian experts was to be held in Moscow in 1991. His country would be submitting requests for technical assistance to the UNCTAD secretariat in the near future.

80. With regard to agenda item 8 (b), his delegation considered that it would not be wise to revise the text of the Set at the present time, although it remained flexible on the question of change at a later time. What was most important was to concentrate on resolving the practical problems of implementing the Set as it was, particularly with regard to transparency and intergovermental consultation procedures.

81. With regard to transparency, one of the most important issues was to establish a multilateral mechanism for the exchange of RBP information. His delegation basically agreed with the suggestions made by the UNCTAD secretariat in that connection, but more was needed, and the developing countries' suggestion concerning access for all interested parties to existing national RBP registers deserved serious consideration. This could pave the way towards a centralized register in UNCTAD, though the financial implications of such a project would have to be examined. With regard to intergovernmental consultations, his delegation supported the UNCTAD secretariat's suggestion concerning the consultation request procedure and a regularly updated list of national RBP control bodies. However, his delegation doubted whether the secretariat's suggestion not to determine a definite procedure for intergovernmental consultations was correct. Efforts must be made to develop a procedure for intergovernmental consultations that would ensure equality for all parties and would not turn consultations into arbitrational investigations.

82. With regard to technical assistance, it must be emphasized that such assistance must be provided to all States and not just a limited number of countries. Finally, his country was ready to support the proposal to turn the Intergovernmental Group of Experts into a main committee and to hold a regular review conference in 1995, if the necessary financial resources were available.

83. The representative of India supported the statement made on behalf of the Group of 77. He said that since adoption of the Set, the developing countries had gone through what had been widely described as a "lost decade of development", with economic stagnation or decline characterizing most of them. The world had also seen increased internationalization of production in agriculture, industry and services, a greater role for transnational enterprises in the international allocation of economic resources, scientific and technological capacities and associated benefits, the trend towards deregulation in developed countries, the efforts towards liberalization and greater use of market mechanisms and free trade in East European and developing countries, not to mention the attempts in the Uruguay Round of MTNs to halt and reverse protectionism and liberalize world trade. These changes, however, did not in any way render the Set less relevant than it had been in 1980. In fact, they reinforced the raison d'être of the Set and underlined the urgent need to implement it in letter and spirit.

84. The increased relevance of the Set on RBP control also arose from its two fundamental objectives. The first objective related to the development dimension of RBP control. There was recognition in the Set that RBPs were to be controlled not only because of the price/quality consideration inherent in competition and efficiency, but still more because these practices adversely affected the economic development of developing countries. The Set also provided that to ensure the equitable application of the Set, States - particularly developed countries - should take into account in their control of RBPs the development, financial and trade needs of developing countries. If the 1990s had to be a decade of development in contrast to the 1980s, the development dimension of RBP control must be reiterated and this Conference should reaffirm its determination to control RBPs with a view to minimizing or eliminating the adverse impact of such practices on the trade and development of developing countries.

85. Another fundamental objective of the Set, was to promote genuine competition and to uphold the democracy and what had been aptly referred to in many developed market economies as the "integrity" of the market. Deregulation and liberalization of the market, both domestic and international, implied that steps must be taken to prevent distortions of the markets which would have not only anti-competitive but also anti-welfare effects. If East European and developing countries for example were frustrated in their quest for self-sustaining growth and development because of the distortions of the market brought about by the use of RBPs by developed-country enterprises, this could lead to total disillusionment with the free market approach. This meant that in the domestic context it had to be ensured that "market élites" did not indulge in the concentration of capital, or in abuse or acquisition of dominant position of market power with adverse effects on the smaller operators in the market, on the consumers and on social welfare in general. In the international context, as the Secretary-General of UNCTAD had pointed out, RBP control would have to ensure that firms of developing countries were actually enabled to compete on an equitable basis with developed-country enterprises.

86. Developing countries must of course enact national legislation, as well as identify and activate national focal points, to detect and take action against RBPs used by foreign enterprises in their markets. The responsibility of developed countries, however, was even greater. Their transnational enterprises had global reach and the capacity to manipulate and dominate as part of their corporate strategy not only the domestic markets of developing countries but also the terms and conditions under which these countries engaged in international trade and sought accelerated development. Hence, the developed countries' plea of lack of government control over their enterprises in an era of deregulation and of extra-territoriality of the actions and misdemeanours of their enterprises in developing countries was not admissible. Deregulation, as had been admitted by developed countries themselves, presented a fresh case for stringent RBP control and greater discipline on private operators, whether operating within the country or abroad. Also, as was well known, extra-territoriality had not prevented developed-country governments from imposing restraints on their TNCs operating outside their territory when they considered it necessary in their own national interest. This could, therefore, act in the interest of democracy of the market, if not for the benefit of developing countries. Also, there was no justification for RBP control being sacrificed at the altar of global trade competitiveness and of governments deliberately turning a blind eye or even encouraging or colluding with national enterprises in their use of RBPs in the international trade.

87. An important objective of the Set was to ensure that RBPs did not impede or negate the realization of benefits that could arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries. If Governmental tariff and non-tariff barriers disappeared even partially as a result of the Uruguay Round, subtle and therefore more insidious non-governmental trade barriers would remain and might even intensify. Governments must therefore cast their vote for genuine trade liberalization by making a firm commitment to discipline the use of RBPs in international trade by their enterprises. Any liberalization of governmental trade measures must go hand-in-hand with strengthening international disciplines on RBP control.

88. Outlining the kind of RBPs that had been encountered by developing countries in the last 10 years in the area of trade in goods, trade in services with regard to foreign direct investment and international transfer of technology transactions, he also gave an assessment of the adverse effects these practices had on the trade and development of developing countries. Thus, in the case of trade in goods these practices had led to worsening of terms of trade of developing countries which had had to pay excessive or predatory prices for their imports and accept low returns for their exports; their industrialization and development process had been hampered and there had been a drain of scarce resources and foreign exchange, thus contributing to the balance-of-payments and debt crises which many developing countries faced. The export supply capability of many developing countries was also inhibited and the production, distribution, pricing and marketing of goods in the domestic markets of many developing countries were distorted, to the detriment of consumers in particular and social welfare in general. Pointing out that RBPs were more likely to emerge as a systematic distortion of the normal play of market forces in the services sector, he called for particular attention to be paid by governments and their enterprises, particularly the TNCs, to the control of RBPs in international trade in services. TRIMs in use in foreign direct investment were indeed RBP control measures. Therefore it was imperative that RBPs be prohibited in international investment transactions. International transfer of technology transactions were particularly vulnerable to the use of RBPs by sellers and purveyors of technology and the chapter of RBP control in the draft United Nations code of conduct for the transfer of technology had not been agreed to because of the unwillingness of developed countries to recognize the need for disciplining the use of RBPs by their technology champions. This, combined with the OECD trend towards exempting transactions involving intellectual property or technology transfers from the requirement of RBP control, would have major negative consequences for the technological and developmental interests of developing countries and would amount to non-implementation of the Set.

89. He stated that India had fully implemented the Set not only through enacting necessary RBP Control Legislation (Monopolies and Restrictive Trade Practices - MRTP - of 1969) but also by setting up an enforcement machinery through the Director General of Investigation and Registration and the MRTP Commission. The Commission was fully empowered to entertain, examine and pass appropriate orders regarding any complaints received by it with regard to monopolistic, restrictive and unfair trade practices. The Commission also inquired into RBPs alleged against foreign enterprises. However, having national focal points for the control of RBPs was not sufficient and without the co-operation and support of governments of countries whose enterprises were operating in India, the success of investigations in deterring enterprises from resorting to RBPs could not be ensured.

90. He stressed that the Set had not been very effective in controlling RBPs because it was basically a voluntary code without any legal sanction and there was always the problem of enforcing a moral code. In addition, there were several "escape clauses" in the Set, which enabled enterprises to use RBPs in international trade and yet claim that they had been faithful to the Set. Though considerable progress had been registered by developing countries in adopting appropriate RBP control legislation, they faced genuine difficulties in being able to detect RBPs being used against their trade and lacked the power and capacity to check developed-country enterprises in this regard.

International co-operation at governmental and enterprise level had been regrettably conspicuous by its absence. Because of the low bargaining power of developing countries even vis-à-vis developed-country enterprises, there appeared to be hesitation in using the consultation procedures provided in the Set. The Intergovernmental Group of Experts entrusted with the task of monitoring the Set did not have sufficient political weight to goad governments into complying with the Set. Most of all, the political will of governments to get their firms to observe the Set had not been much in evidence. It was for these reasons and in order to improve the record of implementation of the Set in the 1990s and to eliminate the adverse impact of RBPs on the trade and development of developing countries, that he fully supported the proposals put forward by the Group of 77 on amendment of the Set, on transparency, on consultation procedures, on technical assistance, on the upgrading of the Intergovernmental Group and on having another Review Conference in five years' time.

91. The representative of Chile recalled that in March 1990 his country had returned to democracy. The new Government had declared its firm intention to maintain the policy of liberalization of the economy which had been started in 1985, while increasing efforts in the social area. As a result of this policy, the institutions responsible for the defense of free competition had been strengthened. The Anti-monopoly Law (Decree 211 of 1973) established the Resolutive Commission as the principal body for the control of restrictive business practices, the Preventive Commission which served as a mediator, and the National Economic Tribunal (Fiscalía Nacional) with considerable investigatory powers. During the current year, Law 18.525 had enlarged the scope of application of the responsibilities of the Fiscalía Nacional to the control of price distortions with respect to imports. Moreover, the Customs Ordinance provides that the Chairman of the Fiscalía is a member of the National Customs Board, the body responsible for determining the country's customs policy. As could be seen, his country was keen on constantly improving its legislation with the objective of promoting free competition. It was also worth mentioning that a World Bank loan had enabled the Anti-monopoly Commission to computerize its data base. All these developments were fully in line with the Set of Principles and Rules. Moreover, Chile was willing to share its experience with other countries wishing to adopt and implement competition legislation.

92. In strongly supporting the need to implement the Set, his delegation was of the opinion that in the past 10 years there had been no such effective implementation. The basis for success in this area was no doubt progress in the area of transparency, consultations among States and an effective technical assistance programme enabling all countries to adopt effective RBP legislation. His delegation hoped that the Conference would be able to adopt the necessary measures to assist the developing countries in their endeavour to adopt effective RBP control mechanisms. He also made reference to UNCTAD's regional RBP seminar for Latin America, which had taken place in Caracas on 24-28 September 1990, at which his country had the opportunity to share its experience in this field. He commended the Governments of Norway and Sweden for providing the voluntary financial resources which had enabled the UNCTAD secretariat to organize that seminar. He invited other countries to follow this example. Finally, he gave full support to the Group of 77's position that the Intergovernmental Group be upgraded into a committee on restrictive business practices, and that a Third United Nations Review Conference on Restrictive Business Practices be held in 1995.

93. The representative of Egypt said that 10 years after the adoption of the Set, restrictive business practices continued to adversely affect world trade, particularly the trade and development of developing countries. In this respect, his delegation wished to support the statement made by the spokesman for the Group of 77, as well as the draft decision submitted by Algeria at the ninth session of the Intergovernmental Group of Experts. In view of the huge economic size of major transnational corporations, he said that if TNCs were given a free-hand to resort to RBPs without the possibility of appropriate measures being taken to countervail them, they might dominate and monopolize markets, and possibly become capable of influencing the production, distribution and pricing of goods, services and technologies. Action should therefore be taken to counter the negative impact of restrictive business practices on international trade. He was further concerned at attempts to water down the threat which RBPs posed to international trade, by labelling these practices "private operators' behaviour" which he considered was a misnomer.

94. He reiterated the importance of technical assistance in the field of RBPs and expressed regret at the limited budget allocation, spread over a five-year period, to cover RBPs' technical assistance activities. Technical assistance was one of the crucial elements in the implementation of the Set and in the control of RBPs. He urged member States, in particular developed countries, to take effective action in the support of such activity, especially for developing countries. He also called for strengthening of the Set of Principles and Rules in line with the Final Act of UNCTAD VII, paragraph 105 (18), by ensuring transparency and defining consultation procedures among States in order to remedy the adverse effects of such practices. He rejected the claim that information and consultation mechanisms, as embodied in the Set, were sufficient and therefore needed no improvement.

95. The representative of Ghana endorsed all the elements contained in the Statement made by the spokesman for the Group of 77. He added that, since 1983, Ghana had embarked on a serious economic recovery programme to salvage its then flagging economy. Several trade policy measures had been taken to help increase exports and attract foreign investments. Ghana's strong interest in the Set had further been reinforced by its current trade liberalization programme. As a country committed to healthy competition, Ghana needed to control harmful corporate practices. He reiterated Ghana's earlier request to the UNCTAD secretariat for technical assistance to facilitate its efforts in enacting appropriate domestic legislation and for training local officials to implement such a legislation effectively.

96. The representative of the European Economic Community stated that a number of important developments in the European Community's competition policy had recently taken place, showing clearly the Community's commitment to preventing and controlling restrictive business practices and to preserving a pro-competitive environment.

97. First, the new regulation on merger control had been adopted in December 1989 and entered into force in September 1990. Its basic concept was to establish a clear distinction between mergers having a Community dimension, for which the Commission was responsible, and those whose main impact was at the national level, which would remain the responsibility of national

authorities. The criteria for this distinction were based on the turnover of the companies involved, thus reflecting the overall economic and financial power of those undertakings, their level of activity within the Community and the transnational nature of the operation. The criteria for assessing mergers falling within the field of application of the Regulation were linked to the basic concept of "dominant position", which had to be assessed within the framework of an overall appraisal of competition. The Community's concern was to determine whether a merger impeded competition by creating or strengthening a dominant position. If the finding was that there was a dominant position as a result of which competition was significantly impeded, the merger might not proceed. The Community's concern had also been to provide for strict enforcement of the Regulation, which reflected its general point of view that adequate enforcement mechanisms were an essential condition for an effective implementation of competition policy. Thus, non-compliance with obligations under the Regulation might be fined with an amount of up to one tenth of the companies' aggregate turnover. The decisions taken under the merger control regulation were of course subject to control by the European Court of Justice, or the Court of First Instance which had taken up work in 1989. Judgements of the Court of First Instance were subject to appeal to the Court of Justice.

98. Secondly, substantial progress had been made in opening up certain service areas to greater competition, such as transport, telecommunications, broadcasting, energy, banking and insurance. In the transport sector, the most striking changes had occurred in air transport: in July 1990, a second package of liberalization measures had been adopted with the aim of pursuing the liberalization process in this sector following those introduced in 1987. In the telecommunications sector, the Commission had adopted two directives with a view to introducing competition in the markets of telecommunications terminal equipment and telecommunications services. With regard to audiovisual services, the Community's main aim was to ensure the openness of markets and to dismantle barriers to entry. This approach must be seen against the background of deregulation of broadcasting in member States and the new technical possibilities opened up by satellite and cable television.

99. Thirdly, the Commission's attention had also been focused on sectors such as energy, banking and insurance. Here, the Commission had studied the specific problems connected to each of those sectors and was applying competition rules more vigorously than in the past, precisely with the aim of ensuring the creation and existance of pro-competitive market structures.

100. She reiterated that the Community was firmly committed to a policy of strict control of restrictive business practices. This was not only laid down in the Treaty of Rome and demonstrated by numerous decisions imposing heavy fines on firms, but also by the fact that restrictive agreements, unless exempted, were null and void and could not be enforced before national courts. Certain forms of co-operation, in particular between small and medium-sized enterprises, might certainly merit positive consideration by way of exemption, because the dangers those arrangements presented for competition were small by comparison with the ensuing benefits in an overall evaluation. However, such forms of co-operation would not be exempted if effective competition on the market was not guaranteed.

101. The spokesman for Group B (Netherlands), speaking on item 8 (b), stated that during the last 10 years Group B had often recognized the importance of both bilateral and multilateral technical assistance as an important way to secure the implementation of the Set and to maximize its utility. In the statement on technical assistance at the ninth session of the Intergovernmental Group, Group B had emphasized the increasing importance of such efforts, noted that many members of the Group had improved their efforts to provide such assistance, and reiterated that Group B was willing to reinforce its activity in meeting requests from individual countries, subject to the availability of resources. In the year since the ninth session of the Intergovernmental Group, the increased interest of developing and Eastern European countries in market liberalization had led to more requests for technical assistance. Representatives of many countries had expressed their needs for such assistance earlier in this Conference. The members of Group B were committed to providing appropriate technical assistance on both a bilateral and multilateral basis, subject to the availability of resources.

102. It was an obvious but important point that different countries would require different types of technical assistance with respect to RBP control. Technical assistance programmes must be flexible and readily adaptable to the needs of particular recipients. Group B's experience had been that multilateral assistance was especially effective in introducing large groups of officials from several countries to basic RBP control principles; the UNCTAD secretariat's work in organizing seminars for officials in developing countries in different regions of the world had been of significant value in this regard. In the same way, Group B's experience was that bilateral assistance had been very effective in providing in-depth technical co-operation between RBP control authorities, particularly because bilateral assistance could be readily tailored to specific needs. In this context, Group B wished to note that "bilateral" assistance could include assistance from one of its members to two or more developing countries and thus was in a sense "multilateral" as well.

103. Just as there were several types of technical assistance, there were also several sources of funds for technical assistance. Bilateral assistance normally was funded by the countries involved. Multilateral assistance might be provided by UNCTAD, either through its own resources or through special sources such as the RBP Trust Fund, which had been financed in the past by France, Norway and Sweden. Other funding sources, such as UNDP, might also be available. He also pointed out that OECD had provided certain technical assistance to developing and Eastern European countries, using both OECD's own resources and those of its member States.

104. Another - and so far underutilized - source of technical assistance was the informal consultation process at the Intergovernmental Group sessions provided for in section G.3 (a) of the Set. Such informal consultations had served in the past to identify problems that developing countries, in particular, faced in RBP control, had provided a forum for discussions of possible solutions to such problems and had served to establish important contacts between experts of developed and developing countries. As the statements of Poland and the Republic of Korea at this Conference had illustrated, these sessions offered a unique opportunity for newly-industrialized and Eastern European countries to discuss their experiences in adopting and enforcing RBP control legislation with other

countries facing similar situations. Indeed, these informal consultations offered an especially efficient means of sharing information among a wide range of countries, particularly when experts from both developed and developing countries participated.

105. He also commented on the secretariat's report on technical assistance and its proposals for a framework for such assistance (TD/RBP/CONF.3/4). This report provided much useful information concerning the large amount of multilateral and bilateral technical assistance that UNCTAD and Group B countries had provided during the last 10 years. He noted, however, that a good deal of bilateral assistance that Group B countries had provided recently had not been included in the report, in many cases because the assistance post-dated the preparation of the report. While the secretariat's report provided much useful information on the assistance that had already been given, it was less useful in considering what course future assistance should take. For example, while paragraph 66 of the report noted that the secretariat had received requests for technical assistance "of one form or another" from 25 countries, the report did not specify the nature of individual requests. It was thus difficult to evaluate the needs for assistance demonstrated by the requests.

106. The agreed conclusions adopted at the ninth session of the Intergovernmental Group, in paragraph 5 (c) (i), explicitly required the secretariat to provide information on the contribution of technical assistance already carried out to the control of RBPs so that the Conference could make an accurate assessment of technical assistance requirements. However, the secretariat's report admitted, in paragraph 6, that it provided only a "preliminary assessment" of the contribution of such technical assistance. Group B would request that the secretariat provide a more complete assessment of the contribution of individual technical assistance programmes. Group B also would have found it valuable had the secretariat's report discussed the views of countries that had received technical assistance about the relative usefulness of particular types of assistance.

107. Group B believed that the secretariat's proposals for a framework for technical assistance in paragraphs 71 and 72 of TD/RBP/CONF.3/4 contained useful elements. However, the secretariat's proposals were very ambitious and gave every appearance of being extremely expensive. They did not, however, provide any basis for setting priorities or identifying benefits among their different aspects or provide even a rough idea of the direct and indirect expenses involved. The proposals also did not discuss how these programmes could be carried out with UNCTAD's limited personnel resources. Accordingly, before Group B could meaningfully evaluate the secretariat's proposed framework, the secretariat must suggest priorities and provide detailed cost estimates for the individual elements of the programme and for the programme as a whole. In the meantime, the secretariat should continue to provide technical assistance within the existing resources of the United Nations system, including reallocation of such resources. It could also use any voluntary contributions that member States might provide to individual projects that were given priority.

108. Finally, he emphasized that multilateral technical assistance had an important role to play in helping developing and Eastern European countries to meet their RBP control goals. Given its limited resources, UNCTAD's first

priority should continue to be the organization of regional seminars. Group B's views on this point were based on its members' firm belief that bilateral assistance should and would continue to play a significant role in developing effective RBP régimes in accordance with the Set.

109. Turning to the question of information and consultation procedures, he stated that Group B considered that the existing provisions of the Set (C.3, C.4, E.9 and F.4) provided an adequate framework of promoting voluntary exchanges of information and consultations between member States on competition policy issues, provided that the basic conditions - the existence of a national competition law and effective enforcement machinery - were fulfilled to enable such exchanges and consultations to take place. Specific information was frequently useful when investigating or prosecuting certain RBPs, including those that involved other countries. Information on different countries' experience with the operation and enforcement of their national laws was equally important. Thus requests for information addressed to foreign authorities might facilitate enforcement of national legislation. In this connection, Group B welcomed the list of authorities in member States which the secretariat had compiled for purposes of informing States of the names, addresses, telephone and telefax numbers of the authorities through which such requests should be channelled, and he hoped that the list could be expanded to include more countries and be regularly updated.

110. He stressed the importance of the voluntary nature of the procedure for requesting information and made a distinction between requests for information on general matters of competition law and policy and requests for information on particular cases. While States could willingly accede to requests for information which was publicly available and which it was not unduly burdensome to provide, much of the information acquired in the course of investigations or proceedings in individual cases was confidential and divulgence of such information was prohibited by law. States therefore could not respond to the latter category of requests for information.

111. There were also different types of request for information which required different treatment. For example, requests for information concerning the content of another country's competiton law did not require the use of a form or checklist to facilitate the formulation of a request. On the other hand, there were more complex requests, for instance seeking information that was useful for the investigation of a particular RBP case. In this instance Group B considered that it might be helpful for countries requesting information for purposes of enforcing their national competition laws to have access to a checklist of items which could be included in a request. The request should be framed in terms that were as specific as possible and be limited to what was suggested by the secretariat in its report (TD/RBP/CONF.3/3): a description of the RBP case in question; the enterprise involved; the legal basis for instituting proceedings; the reasons for requesting the information, and the intended use of the information. In the interests of obtaining prompt responses, such requests should be made directly to the competent authority of the country in question, as noted above.

112. Finally, on the question of requests and exchanges of information, Group B saw no harm in keeping the secretariat informed of developments, provided that the provision of such information was voluntary, not unduly burdensome on either the secretariat or the countries involved, and consistent with national law and policy.

113. With regard to the consultation procedures, he emphasized that, although no consultations had been requested so far by member States under Section F.4 of the Set, such consultations might occur as more and more countries adopted and applied competition laws. The existing provisions of the Set provided a good basis for consultations and did not require change. He urged States to avail themselves of these provisions in appropriate cases of control of RBPs. Limitations of jurisdiction and sovereignty as well as the financial implementations needed, however, to be taken into account when consultations were requested. Group B saw some merit in the idea that a voluntary checklist of items could also be developed to facilitate requests for consultations. Such a checklist could include the reasons for the request for consultations, the specific details of the behaviour or activity about which the consultation was requested, as well as some of the elements mentioned in connection with the requests for information.

114. He recalled that, in his opening statement, he had announced that Group B would submit a proposal with regard to improved mechanisms for informal consultations. Such consultations among RBP experts had been extremely useful in the past in providing for informal exchanges of views on RBP issues. Therefore, Group B was proposing that these informal consultations be conducted on a regular basis in the future, within the framework of the Intergovernmental Group meetings. At every session of the Intergovernmental Group, at least two such meetings should be provided for, with subjects, date and timing set well in advance. Those meetings should be devoted to subjects of practical importance in the field of RBPs. They could consist of presentations by several experts, followed by comments, questions and further exchange of views. In order to ensure the success of the meetings, documentation should be made available to participants at an early date to facilitate their preparations. The subjects to be discussed in informal consultations at the tenth session of the Intergovernmental Group should be selected by this Conference in discussions among all groups. Group B proposed that the following subjects could be taken up:

- the detection of RBPs, in particular price-fixing arrangements;
- enforcement and sanctions;
- principle of control of abuse versus the prohibition principle.

Group B would welcome any other suggestions in this field. He added that his Group did not consider it useful to make provision for a conciliation procedure, including panels or working parties, for use in the event that consultations did not give rise to a mutually satisfactory solution. Until more experience was acquired with the operation of consultations between member States under the Set, it would seem premature to envisage conciliation. He pointed out that although this procedure was provided for under the OECD Council recommendation, no cases of conciliation had occurred since the procedure had been introduced in 1973.

115. His Group could not accept the secretariat's proposal (TD/RBP/CONF.3/3, paras. 16, 17, 30 and 72) that member States should reply annually to a detailed questionnaire concerning requests for information and consultation. This proposal confused the separate concepts of information exchange and consultations and touched closely on sensitive relations between States as well as on law enforcement concerns. Moreover, the type of information

requested by the proposal would be very difficult for States to compile and for the secretariat to process and did not seem to be of much practical value. The Group B countries would, however, continue to submit annual reports to the UNCTAD secretariat on developments in their national competition policies, in accordance with section F.2 of the Set, and would appreciate the drafting of a format to induce more countries to submit such reports. His Group believed that the proposals contained in paragraphs 37 and 38 of the secretariat report would unduly complicate the submission of such reports and would not achieve the results expected.

116. The representative of Bulgaria said that the review of 10 years of application of the Set had proved that the Set was a valuable instrument for the creation of a more competitive environment in international trade and the prevention of trade-distorting measures. Adopted on a multilaterally agreed basis, the Set was a well-balanced document which did not need to be revised. Fuller implementation of the Set could have been a further impetus for enacting national RBP legislation.

117. He supported efforts for increasing transparency and improving the process of consultations, as stated in TD/RBP/CONF.3/3, and welcomed the development of an information system as indicated in TD/B/RBP/69. He was further of the opinion that the provisions of section E.9 of the Set had not had the expected effect and suggested the diffusion of RBP-related information through the establishment of a centralized information system in UNCTAD. However, this system would require the adoption of national RBP legislation by all countries and that all countries would provide adequate answers to questions in the standard information request form.

118. It was obvious that the provisions contained in the Set regarding consultations had not been fully implemented and he supported the proposal made by the UNCTAD secretariat for creating a registry in each country as well as a central registry in UNCTAD which would be opened for consultation by any State and thus would increase transparency. He added that his delegation was of the opinion that the existing institutional framework in UNCTAD to deal with the problems of RBPs was sufficient. Nevertheless, he would not oppose, if all regional groups were in favour, the upgrading of the Intergovernmental Group into a committee. He also supported the idea of convening a new Conference in 1995.

119. Bulgaria was undergoing a comprehensive reform of the economic system aiming at the establishment of an open-market economy. Action for adoption of RBP legislation was under way in the Grand National Assembly. The draft law on competition under discussion contained provisions which were directly linked with the provisions of the Set. Thus under consideration was the creation of a commission for the protection of competition, as well as measures for limiting monopoly practices by companies, such as agreements on fixing prices, market or customer allocation arrangements, allocation by quota as to sales and production, concerted refusal of supplies and other abuses of dominant position. It was also stated in the draft law that the authorities would create appropriate conditions for fostering competition among firms and for the prevention of monopolistic activities and unfair competition at home and on the international markets. Furthermore, the National Assembly would be discussing a draft law on the privatization of State property, which was to be carried out transparently and in parallel with measures for demonopolizing business activities and promoting competition.

120. The ever-increasing need for consultations and technical assistance, both at bilateral and multilateral levels, in the field of restrictive business practices was of particular relevance to his country. Therefore, his country supported the proposals of the secretariat to establish an international network of RBP control experts to provide technical assistance, advisory and training missions and encouraged the improvement of existing budgetary possibilities and voluntary contributions.

121. The representative of Hungary, referring to the review of the application and implementation of the Set, considered that the Set had proved to be well-balanced and had served as a good basis for promoting the control of RBPs in international trade. The absolute elimination of RBPs was a very long process and it would probably never be fully achieved. He was convinced that controlling RBPs could not be achieved by setting up international standards or creating a framework for international actions. Fighting and controlling abusive practices such as RBPs could be conceived only in a context of the free competition of a market economy. However, the most important step towards the fulfilment of the objectives of the Set was the implementation of national legislation. Since the General Assembly of the United Nations had adopted the Set 10 years ago, a rapidly increasing number of countries including Hungary, had adopted national RBP control legislation.

122. Citing some elements of the on-going process of creating a market economy, he said that the Hungarian Act of 1988 on Economic Association defined the forms, structure and scope of the associations, and the Act on Foreign Investment gave legal guarantees and preferences such as MFN treatment, national treatment, prompt and adequate compensation, exchange transfer, tax allowances for inflow of foreign capital; the new Constitution declared the equality of all forms of property; the Government had abolished the foreign-trade monopoly of the State and had passed a new Act on Unfair Economic Activity. In the formulation of the new rules, the legislation had had to take into account the enumeration of all forms of behaviour to prevent any restriction of competition or any abuse of dominant economic position; fusions had to be controlled; and sanctions had to be elaborated accordingly. The fusion of economic organizations was made conditional on licensing by the Office responsible for the supervision of competition. The possible sanctions would be more comprehensive than formerly and the fines imposed could be twice as high as the financial benefit attained unlawfully, or as the damage caused, but it must have exceeded it by a minimum of 40 per cent. The Parliament had accepted this Act at the end of November 1990.

123. Finally, he stated that at the present time his Government was of the opinion that the Set should not been changed.

124. The representative of Bolivia reiterated his full support for the views expressed in the Group of 77's statement. He subscribed to the commitment to the Set and to the need for improving and further developing that instrument, as during the 10 years since its adoption it had not been adequately implemented. Developing countries had experienced a dramatic deterioration of their position in the world economy. This was the case in terms of the widening technological gap, the debt situation and the state of depression of their economies as a result of very stringent adjustment policies they had been obliged to adopt.

125. The unfair effect of RBPs on these countries' trade and development had further contributed to this disastrous outcome of the past decade. If the 1990s were to be a decade of development, the Review Conference would have to reiterate its determination to control RBPs. Like other developing countries, his country had undertaken important reforms, at very high costs in social terms, to adopt market-oriented policies and further liberalize open markets, with the objective of enabling the enterprises of his country to become competitive on a fair basis with those of the developed countries. However, without an effective implementation of the principles and rules embodied in the Set, this objective would prove to be impossible to attain. His delegation felt the concerns of the Group of 77 about the inadequate application of the Set in the 10 years since adoption were fully justified. In his delegation's opinion, the Set represented a minimum. There was an implicit need to improve it. As indicated by the representative of India in her statement, the results of the Review Conference would send a clear political message to the negotiations under way in GATT, as it was necessary for any rules regarding services, direct foreign investment and technology transfer to contain elements for the control of RBPs.

126. Trade liberalization needed to be closely linked to the establishment of RBP control if one wished to prevent RBPs from becoming the main instrument of protection. What was needed in this respect was, in particular, the establishment of mechanisms to improve transparency. Consultation procedures were also to be improved if they were to be properly used. It was also essential that technical assistance for developing countries be strengthened. Moreover, his delegation supported the view that a special committee on RBPs would be the appropriate level for dealing with this subject at UNCTAD, and that a Review Conference should be held in 1995.

127. The representative of the Philippines stated that the preservation of the basic democratic principles of free competition in the market-place embedded in the Set should serve as a guide for the Conference.

128. He recalled that the Philippines had passed laws on monopolies and combinations in restraint of trade which penalized cornering of the market or restraining free competition in the market.

129. Seven years after the adoption of the Set, the new constitution had been ratified in 1987, containing constitutional mandates on trade practices and competition. In order to implement these constitutional mandates, the Senate had introduced in 1989 Bill No. 996. An important feature of the bill was the proposal to establish an independent Anti-Trust Commission to oversee the implementation of the Act once it was enacted. The proposed body would be similar to the office of the Ombudsman. The bill also proposed the creation of an Ombudsman on trade, commerce and industry. Many features of the bill had been adapted from the various Anti-Trust Laws of the United States and from the various court decisions that interpreted them. Some features of the bill had also been adapted from the European models or experience. The proposed Law was also inspired by the Set on RBPs and by the Samuelsonian principle: "the whole logic of private enterprise rests on the fundamental assumption of active competition in free markets. If such a system is to be preserved, it is essential that competition be kept active and markets free". Initial difficulties in implementing the Law could be foreseen and therefore technical assistance for officials charged with the enforcement of the Law would be appreciated, especially from UNCTAD.

130. He pointed out that developed countries had also experienced difficulties in implementing their relevant laws on the control of RBPs. The slow progress in the implementation of the Set on RBPs by the developing countries should thus not justify a failure on the part of the Conference to reach constructive results. If developed market economies found it difficult to control restrictive business practices, greater understanding and support should be given to developing market economies in this regard. In this connection, in particular concerning further development and improvement of the Set on RBPs, his delegation endorsed entirely the proposals of the Group of 77 mentioned in the opening statement of the Group. Due consideration should be given to the amendments of the Set as proposed by the Group of 77 to further reaffirm the commitment of States to the Set, which was after all recommendatory and not binding.

131. On the issues of transparency and consultation procedures, it should be stressed that their improvements would spare the developing countries from the same problems already encountered and remedied by developed countries in the control of RBPs. With regard to upgrading the Intergovernmental Group to a special UNCTAD committee, such a step would demonstrate the seriousness States accorded to the implementation of the principles and rules of the Set. He added that the importance of technical assistance could not be over emphasized. Priority consideration should be given to it by the Conference along the lines proposed by the Group of 77. The Philippines also strongly supported the convening of the 1995 Review Conference because of the principle that review was an integral and indispensable part of the process of controlling RBPs.

132. The spokesman for the Group of 77 (Philippines), introducing the draft resolution on agenda item 8 which his delegation had submitted on behalf of the States members of the Group of 77 (TD/RBP/CONF.3/L.2), observed that, a decade after the adoption of the Set, RBPs continued to impede and negate the realization of benefits that ought to accrue to developing countries as a result of the liberalization of tariff and non-tariff barriers in world trade. Although by their very nature RBPs were subtle and secret, developing countries had perceived and continued to perceive that far from being eliminated, RBPs of developed country enterprises continued and had even increased their adverse effects on international trade, especially on the trade and development of developing countries. The role played by developed country TNCs as purchasers, manufacturers, suppliers and sellers of goods and services in international trade was such that they, as a matter of global corporate strategy, acquired a dominant position of market power in almost all developing country markets and in international trade transactions. The Group of 77 was unaware of any major positive change with respect to the existence of import and export cartels in the developed market-economy countries. Further, although countries had adopted legislation on mergers and the EEC has passed a regulation intended to control extremely large mergers, it still remained to be seen whether the trend towards concentration was being impeded. In fact the Group of 77 was of the opinion that the contrary was true. What was being witnessed was the globalization of markets and the creation of world-wide monopolies through mergers, take-overs and strategic alliances between large firms, putting developing country firms in a position of further disadvantage and marginalization.

133. This situation distorted not only trade in goods, but also trade in services. While the Set covered both goods and services, the present context of international trade was very different from what it had been 10 years

previously. Services issues represented a very sensitive area for developing countries, as the use of RBPs in services had an even greater trade-distorting effect and deeper repercussions on their trade and economic development than RBPs in the area of goods.

134. Foreign direct investment was another important area where RBPs were employed. For example, the provision of capital often gave rise to tie-ins. Funds were provided but were earmarked in advance for specific firms, or for firms from the capital-supplying country. On the other hand, government investment regulations presently under negotiation in GATT in the context of TRIMs were measures of Governments aimed mainly at countering market allocation, price-fixing, restraints on exports and other RBPs by investors. Hence, in the absence of binding international rules and principles on RBPs, States were obliged to defend their interests through this type of measure.

135. Further, the use of RBPs in technology transfer transactions, such as licensing contracts, was a phenomenon of increasing gravity. Not only was it one of the main stumbling blocks in the negotiations on a code of conduct on technology transfer, but recent developments relating to the treatment of intellectual property rights, and indeed the demands of developed countries in the TRIPs negotiations in the Uruguay Round, went in the direction of increased freedom for the owners of technology to employ RBPs against the recipients of technology. This trend would consolidate the monopolistic appropriation of vital technologies by developed country firms, thus restricting developing country access to technology.

136. As a consequence, more now than 10 years ago, developing countries were suffering from the adverse effects of RBPs on their trade and economic development. On the one hand, RBPs hampered or obstructed their access to foreign markets as a result of domestic cartels, import cartels and vertical restraints by dominant enterprises in domestic and international markets; on the other, prices and conditions of imports of goods and services in developing countries were artificially loaded by export cartels, international cartels, or important vertical restraints by dominant firms, such as tied sales, refusals to supply essential goods or services, predatory and other practices, which took away an ever-growing share of developing countries' scarce resources and foreign exchange reserves. All these had contributed in no small measure to the already difficult position of most developing countries regarding resources, foreign debt, terms of trade, and balance of payments. Industrialization and the building-up of the export supply capacity of developing countries had also been hampered or impeded.

137. For the above reasons, the Group of 77 wished to strengthen the relevant provisions of the Set of Principles and Rules, as proposed in the draft resolution submitted during the ninth session of the Intergovernmental Group of Experts. These proposals were reproduced in draft resolution TD/RBP/CONF.3/L.2, which was aimed at amending and strengthening the Set, as well as improving its application with respect to the important issues of transparency, consultation procedures, technical assistance, upgrading of the Intergovernmental Group into a Committee, and a third review conference in 1995.

138. More specifically, on objective No. 2 in section A of the Set, the proposed amendment was intended to put development dimensions at the forefront of the objectives of the Set.

139. In section B, paragraph 1, the term "unduly" should be deleted. This term was used in different parts of the Set and constituted a major loophole in the implementation of the Set. The term should also be deleted in paragraphs D.3, D.4 and E.2 of the Set.

140. Concerning paragraph B.9, it was proposed to clarify the meaning of the provision. There had been a proliferation of the so-called "grey area" trade restraints: voluntary export restraints (VERs) and orderly marketing arrangements (OMAs). The position of the developed market-economy countries had been that measures of trade policy, including VERs and OMAs, were outside the ambit of the Set by virtue of section B.9. However, the Group of 77 regarded this as a violation of the letter and spirit of the Set. VERs and OMAs, which were caused by unilateral government action or by tacit understandings between Governments, should surely not be exempted under this provision of the Set, otherwise the Set could not be used against international RBPs. It was therefore important to make it clear that section B.9 applied only to formal intergovernmental agreements.

141. On section C, the proposed amendment to paragraph 1 sought to establish more direct responsibility by Governments for taking appropriate action. The amendment to paragraph 2 drew attention to the fact that what was needed was not so much collaboration among developed countries, which was already taking place at OECD, but above all collaboration with the developing countries. On paragraph 7, the aim was for States, particularly developed countries, in their control of RBPs, to take into account the needs of the developing countries and ensure that their own enterprises did not engage in RBPs adversely affecting the trade and development of the developing countries.

142. In section D, it was proposed to strengthen the Set by repealing the exemption contained in paragraph D.3 for enterprises that formed part of the same economic entity, and to delete the footnote to paragraph D.4 concerning acts in abuse of a dominant position; this escape clause was being used by enterprises to circumvent the Set.

143. In section E.6, the amendment focused on information to be obtained from enterprises on RBPs which adversely affected developing countries in particular.

144. With regard to the international institutional machinery, as dealt with in section G of the Set, in the 10 years since the adoption of the Set, the functions of the Intergovernmental Group of Experts had assumed greater importance as Governments had made competition policy a priority. The functions entrusted to the Intergovernmental Group of Experts would therefore be dealt with more appropriately by an UNCTAD committee with a mandate to make recommendations to States. For this reason, the Intergovernmental Group of Experts should be upgraded to become a Committee on Restrictive Business Practices. He wished to emphasize once again that the level of the institutional machinery was a reflection of the degree of importance attached to the Set. The intention of the proposal was not to revise the functions of the institutional machinery set up in section G of the Set. It was merely a reflection of his Group's belief that the functions laid down in section G (ii) of the Set corresponded to those of a Committee. Moreover, the existing machinery, namely the Intergovernmental Group, had been unable to take up important policy measures. In the absence of a legally binding Set, political commitment should be stressed and reinforced.

145. With regard to the issues of transparency and consultation procedures, UNCTAD VII had agreed, as provided in paragraph 105 (18) of the Final Act, that the ongoing work in UNCTAD should continue and be strengthened, particularly with a view to ensuring transparency and defining consultation procedures. The Group of 77 had put forward proposals to improve the application of the relevant provisions of the Set of Principles and Rules in this respect. Some of these proposals were aimed only at strengthening existing mechanisms at UNCTAD, while others were based largely on existing provisions in the OECD Revised Recommendation of the Council contained in document TD/RBP/CONF.3/3, annex III.

146. With regard to the issues of technical assistance and advisory and training programmes on RBPs, particularly for developing countries, as dealt with in section F.6 of the Set, many developing countries were striving to adopt national RBP legislation, in compliance with provision E.1 of the Set. For this reason, the Group of 77 attached considerable importance to technical assistance, which was really the foundation for the application and implementation of the Set. The plan of action proposed in TD/RBP/CONF.3/4, paragraph 71 was appropriate for the needs expressed by the developing countries. He recalled that the Group of 77 had requested the costing of such assistance at the ninth session of the Intergovernmental Group of Experts but that there had been an objection to that request. Nevertheless, his Group felt that targets could easily be set and progress achieved in this field, given good will and commitment. Further, the Group of 77 wished to thank the States that had provided financial contributions to the UNCTAD Trust Fund and appealed to all States, in particular the developed countries, to increase their voluntary financial contributions and to provide their valuable expertise for technical assistance. He also urged the international organizations and financing programmes, in particular UNDP, to provide the necessary resources for the activities involved. He emphasized the importance of multilateral assistance which was the most cost-effective way of meeting the urgent and vast needs of developing countries in this area.

147. The Group of 77 proposal was to strengthen and improve technical assistance, as well as advisory and training programmes, by adopting and implementing a plan of action at the national, regional and subregional levels, as suggested in document TD/RBP/CONF.3/4. It was also hoped that the European Commission, which had been enabled to participate fully in the Intergovernmental Group on a non-voting basis, would play an increasingly active role in the technical assistance programmes.

148. Finally, his Group believed that RBP control should be a continuous process, and it was proposed that a third United Nations conference be convened in 1995 to review all aspects of the Set.

149. The spokesman for Group B (Netherlands) noted that the draft resolution just submitted by the Group of 77 contained proposals for amending the Set. He recalled that it had been and remained the firm conviction of his Group that the Set, in its present form, was an adequate instrument for the control of RBPs. Consequently, Group B did not intend to take amendments into consideration during the Review Conference. He reserved the position of Group B with respect to the other items contained in the draft resolution.

Chapter II

ADOPTION OF PROPOSALS FOR THE IMPROVEMENT AND FURTHER DEVELOPMENT OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, INCLUDING INTERNATIONAL CO-OPERATION IN THE FIELD OF CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(Agenda item 10)

A. Action by the Review Conference

150. At its 6th (closing) meeting, on 7 December 1990, the Review Conference adopted the draft resolution relating to agenda items 8 and 10 which the President had submitted as a result of discussions in the Negotiating Group (TD/RBP/CONF.3/L.3). (For the text of the resolution, see annex below).

151. The draft resolution submitted by the Philippines on behalf of the Group of 77 (TD/RBP/CONF.3/L.2) was withdrawn by its sponsors.

152. The representative of the United States of America stated that his country was pleased to join the consensus reached on the resolution just adopted by the Conference. He wished, however, to make clear the United States' views on paragraph 15 of the resolution. In the view of the United States, the decisions about resource allocation by the international organizations and financing programmes referred to in paragraph 15 of the resolution could not be made by this Conference, but must be left to the bodies whose resources were at issue. Those bodies, after all, were in the best position to judge the most appropriate use of their limited resources, upon which many demands were made. Accordingly, in his country's view, the word "necessary" as used in paragraph 15 should be interpreted by the international bodies to which requests for resources were made, in the light of the circumstances of the requests and within current resource limitations.

B. Closing statements

153. The Deputy Secretary-General of UNCTAD observed that, since the adoption of the Set, the world had evolved towards an ever greater opening up of markets and considerable growth in trade, both in goods and services. The interdependence of national eocnomies meant that it was essential that rules of conduct be accepted and applied by all participants in the market, whether national or international. Accordingly, the Conference had reaffirmed the importance it attached to the Set of Principles and Rules. Admittedly the Set could not be a perfect instrument, but it did have the great merit of existing and representing a universal consensus on RBPs. Having examined the operation of the Set over the past 10 years, the Conference had decided to commit itself to strengthening the application and implementation of all provisions of the Set. In a constructive spirit the Conference had agreed to develop the practical aspects of the Set, in particular those aspects aimed at the adoption of appropriate legislation on RBPs in a growing number of interested countries. In order to promote the adoption of competition laws throughout the world, the Conference had proposed complementary measures aimed at improving transparency on RBPs through the exchange of information, at facilitating consultations, and above all at the provision of technical assistance and training programmes in the area of RBPs. For this purpose, the

developed countries had pledged themselves to continue to provide their assistance. The secretariat believed that, as countries came to have the means to detect and control RBPs efficiently, there would be a tendency for their positions to draw closer and for their national policies on competition to become compatible. The result would be a complementarity of efforts to control RBPs and substantial progress in this area through the adoption of co-operation measures increasing the exchange of information and views - measures that would improve transparency in the sphere of RBPs. He was thus encouraged to see that the Conference had been able to conclude its work on a note of success.

154. The spokesman for the Group of 77 (Philippines) expressed his Group's satisfaction with the positive outcome of the Review Conference. However, this outcome constituted just the first step towards the strengthening not only of implementation but also of the Set itself. The Group of 77 maintained its position that the Set in its present form was insufficient and that it should therefore be amended and given legal force. He noted with satisfaction certain positive achievements of the Conference such as the need to ensure that RBPs did not impede or negate the benefits that should arise from the liberlization of tariff and non-tariff barriers, the recognition of the need to ensure transparency, the definition of consultation procedures in line with the Final Act of UNCTAD VII, as well as the concern expressed at the continued existence of RBPs and the call to States to implement fully all provisions of the Set. This, however, was not enough. In addition, the Group of 77 wished to see a commitment, especially on the part of developed countries, to take into account the development, financial and trade needs of developing countries in their implementation of the Set and the application of the Set in letter and spirit.

155. The countries members of the Group of 77 were fully committed to the adoption of RBP legislation as an important step in the implementation of the Set. However, it was equally important for complementary action to be taken by States, especially the developed countries, to enforce effectively their RBP legislation against enterprises situated in their territories which engaged in RBPs affecting the trade and development of developing countries. That was why his Group noted with approval that the resolution just adopted by the Conference provided that States would give full and sympathetic consideration to requests made by countries injured by such RBPs.

156. He considered that the provisions of the resolution on information constituted a foundation on which mechanisms could be built to satisfy the needs of countries for information necessary for the effective control of RBPs. His Group expected that more work would be done in UNCTAD on this point. As for the provisions of the resolution concerning consultations, his Group was pleased that the provisions of section F, paragraph 4, of the Set had been emphasized and that the Conference had taken the first step towards the definition of consultation procedures through the adoption of paragraph 8 of the resolution. His Group expected that this point also would be developed further.

157. The Group of 77 welcomed the commitment of States members of Group B to continue to provide multilateral and bilateral technical assistance. It was the hope of his Group that the commitment would be translated into tangible results, including augmentation of the resources of the UNCTAD secretariat. Moreover, he hoped that international financial organizations, in particular UNDP, would provide the necessary resources for such assistance.

158. With reference to the Third Review Conference to be held in 1995, he said that the Group of 77 was satisfied that the current Conference had recognized the importance of the review process. He hoped that there would be a greater show of political will that would make it possible to achieve even bigger things in 1995. In the meantime, his Group expected UNCTAD VIII to deal with this issue in a meaningful way.

159. The spokesman for Group B (Netherlands) stated that Group B welcomed the successful outcome of the Second Review Conference. The resolution just adopted represented a fair compromise between the positions of groups on the different issues discussed at the Conference. The constructive and co-operative spirit of all participants as well as the very useful documentation prepared by the secretariat had contributed to this positive result. The Set of Principles and Rules reflected a consensus on the part of the international community with respect to the appropriate means of controlling RBPs and his Group was gratified that the Conference had determined to strengthen the implementation of the Set.

160. As for the substantive accomplishments of the Conference, Group B believed that the agreed steps set forth in the resolution to further improve the procedures for information and consultation would have a beneficial effect on co-operation between RBP control authorities all over the world. Group B was particularly pleased that the Conference had agreed, in paragraph 9 of the resolution, that substantive multilateral discussions on RBP issues among experts should be an integral part of each session of the Intergovernmental Group of Experts on Restrictive Business Practices. He believed that these discussions would fulfil one of the main functions of the Intergovernmental Group and that they would be of interest and benefit to experts from all groups.

161. With regard to technical assistance, the resolution requested the secretariat to undertake several tasks related to improving its work in providing such assistance in appropriate cases, taking into account its current resources and the needs of individual countries. Paragraph 11 of the resolution confirmed the commitment of States members of Group B, including regional groupings, to continue to provide technical assistance on both a bilateral and multilateral basis, subject to the availability of resources and tailored to the requirements of individual countries or groups of countries. Group B believed that the work of the Conference regarding technical assistance would be of significant value for improving the ability of countries effectively to detect and control restrictive business practices affecting their markets.

162. The representative of China said that the resolution adopted by the Conference represented a realistic agreement on the means for strengthening the Set of Principles and Rules. He felt that there were some aspects of the resolution, especially with regard to the implementation of the Set, that called for particular attention. First, after 10 years of operation and in the light of developments in the world economy in recent years, the question of how to implement the Set had become a major issue. It was important to implement the Set in a manner that took account of the changed situation in the world economy. In his view, the issues raised in agenda item 8 (b) had not been fully reflected in the work of the Conference. Many participating countries wished to see further progress on this item, and he therefore hoped

that the matter would receive more attention at future review conferences. He emphasized that the concept of "strengthening" included the further development and improvement of the Set itself.

163. The second point he wished to stress was that, in current international trade and the world economy, a number of RBPs were still in existance, such as grey-area measures (VERs, OMAs), and the internal commercial transactions of the TNCs. The international community should try to eliminate the negative effects of such practices on world trade, and especially on the trade of the developing countries.

164. Thirdly, he considered that the legal force of the Set should be strengthened. It was also necessary to have an appropriate international mechanism to monitor the implementation of the Set. As it stood, the Intergovernmental Group of Experts on Restrictive Business Practices was concerned with technical issues. In the absence of agreement by the Conference to establish a special committee on RBPs, he suggested that one possible solution would be to change the nature of the Intergovernmental Group in a way that would strengthen the effectiveness of that body. He hoped to see further research on this matter in the future with a view to achieving better implementation of the Set.

165. The President said he hoped that the Review Conference might come to be seen as a turning point in the control of RBPs and as an extension of the practical co-operation which already existed among experts on RBPs in Europe and in OECD. By the resolution it had adopted, the Conference affirmed that the benefits of the move towards free-market economies, greater competition and liberalization of markets in the world economy must not be negated by RBPs. To ensure this, there must be more co-operation among competition authorities. He trusted that many of the contacts and friendships which had been made during the Conference would develop into successful working co-operation.

Chapter III

ORGANIZATIONAL MATTERS

(a) Opening of the Conference

166. The Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was opened on 26 November 1990 by Mr. K.K.S. Dadzie, Secretary-General of UNCTAD, who made an opening statement (see paras. 4-11 above).

(b) Election of the President
(Agenda item 2)

167. At its 1st plenary meeting, on 26 November 1990, the Conference elected Mr. Henry EMDEN (United Kingdom of Great Britain and Northern Ireland) to serve as President of the Conference.

(c) Election of other officers
(Agenda item 6)

168. Also at its 1st meeting, the Conference completed the election of its Bureau as follows:

Vice-Presidents:

Mr. Emeka AZIKIWE	(Nigeria)
Mr. Abdeljelbbar BRAHIME	(Morocco)
Mr. Domenico CAGLIOSTRO	(Italy)
Mr. Indrajit Singh CHADHA	(India)
Mr. Gonzalo DE ACHA PRADO	(Bolivia)
Mr. H.H. DE SILVA	(Sri Lanka)
Ms. Anna FORNALCZYK	(Poland)
Mr. Edward HAND	(United States of America)
Mr. Akio IJUIN	(Japan)
Mr. José Enrique MEJIAS UCLES	(Honduras)
Mr. Vassili PECHKOV	(Byelorussian Soviet Socialist Republic)
Mr. RI Tchuel	(Democratic People's Republic of Korea)
Mr. Erik SAHLIN	(Sweden)
Mr. Tadeush V. TEODOROVICH	(Union of Soviet Socialist Republics)
Mr. Marcelo VARGAS	(Mexico)
Mr. Hartwig WANGEMANN	(Germany)
Mr. Li ZHIMIN	(China)

Rapporteur: Mr. Walid Mahmoud ABDEL-NASSER (Egypt)

169. The Conference also decided that the regional group co-ordinators and China would be associated with the work of the Bureau.

(d) Adoption of the rules of procedure
(Agenda item 3)

170. At its 1st meeting, the Conference adopted without change the provisional rules of procedure approved by the Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session (TD/RBP/CONF.3/2).

A corrigendum (TD/RBP/CONF.3/2/Corr.1) was issued subsequently to indicate the changes to be made to the cover page of the rules of procedure as a result of their adoption.

(e) Adoption of the agenda
(Agenda item 4)

171. At the same meeting, the Conference adopted the provisional agenda contained in TD/RBP/CONF.3/1. Accordingly, the agenda for the Review Conference read as follows:

1. Opening of the Conference

2. Election of the President

3. Adoption of the rules of procedure

4. Adoption of the agenda

5. Organization of the work of the Conference

6. Election of other officers

7. Credentials: (a) Appointment of a Credentials Committee;

   (b) Report of the Credentials Committee

8. Review of all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:

   (a) Review of 10 years of application and implementation of the Set;

   (b) Consideration of proposals for the improvement and further development of the Set, including international co-operation in the field of control of restrictive business practices

9. Other business

10. Adoption of proposals for the improvement and further development of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, including international co-operation in the field of control of restrictive business practices

11. Adoption of the report of the Conference.

(f) Organization of the work of the Conference
(Agenda item 5)

172. At its 1st meeting, the Conference decided, in accordance with rule 44 of its rules of procedure, to establish a Negotiating Group for the detailed consideration of agenda item 8 (b) ("Consideration of proposals for the improvement and further development of the Set, including international co-operation in the field of control of restrictive business practices").

173. In accordance with rule 45 of the rules of procedure, the Conference agreed that the President of the Conference should also be the Chairman of the Negotiating Group.

(g) Credentials
(Agenda item 7)

Appointment of a Credentials Committee (item 7 (a))

174. At its 1st meeting, the Conference, acting in accordance with rule 5 of its rules of procedure, appointed a Credentials Committee, the composition of which was based on the Credentials Committee of the forty-fifth session of the United Nations General Assembly, namely: five members from the Group of 77; two from Group B; one from Group D; and China.

175. The Conference agreed that the Credentials Committee should elect as its Presiding Officer a representative of the country chairing the Credentials Committee of the current session of the General Assembly. The Conference further agreed that if any country member of the Credentials Committee in the General Assembly was not represented in the Review Conference, the regional group to which that country belonged would designate another country to replace it.

176. Accordingly, the members of the Credentials Committee were as follows: Brazil, China, Côte d'Ivoire, Ghana, Ireland, Sri Lanka, Union of Soviet Socialist Republics, United States of America, and Uruguay.

Report of the Credentials Committee (item 7(b))

177. At its 6th (closing) meeting, on 7 December 1990, the Conference took note of the report of the Credentials Committee (TD/RBP/CONF.3/7).

(h) Attendance

178. The following States members of UNCTAD participated in the Conference: Algeria; Argentina; Australia; Austria; Bangladesh; Belgium; Bolivia; Brazil; Bulgaria; Byelorussian Soviet Socialist Republic; Cameroon; Canada; Chile; China; Colombia; Côte d'Ivoire; Cuba; Czechoslovakia; Democratic People's Republic of Korea; Ecuador; Egypt; Finland; France; Germany; Ghana; Greece; Honduras; Hungary; India; Indonesia; Iran (Islamic Republic of); Iraq; Ireland; Italy; Japan; Jordan; Kenya; Kuwait; Lebanon; Libyan Arab Jamahiriya; Madagascar; Mexico; Morocco; Netherlands; Nigeria; Norway; Peru; Philippines; Poland; Portugal; Qatar; Republic of Korea; Romania; Sao Tome and Principe; Senegal; Somalia; Spain; Sri Lanka; Sudan; Sweden; Switzerland; Thailand; Tunisia; Turkey; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Uruguay; Venezuela; Yugoslavia; Zaire; Zambia. The European Economic Community was also represented.

179. The Pan Africanist Congress of Azania participated pursuant to General Assembly resolution 3280 (XXIX).

180. The following specialized agencies were represented at the Conference: World Intellectual Property Organization; United Nations Industrial Development Organization.

181. The following intergovernmental organization was represented at the Conference: Organisation for Economic Co-operation and Development.

182. The following non-governmental organizations were represented at the Conference: General Category: International Alliance of Women; International Bar Association; International Chamber of Commerce; World Federation of Trade Unions.

(i) Adoption of the report of the Conference
(Agenda item 11)

183. At its 6th (closing) meeting, on 7 December 1990, the Conference adopted its draft report (TD/RBP/CONF.3/L.1 and Add.1-4), with minor amendments, and authorized the Rapporteur to complete the final report of the Conference as appropriate.

Annex

RESOLUTION ADOPTED BY THE CONFERENCE

STRENGTHENING THE IMPLEMENTATION OF THE SET

The Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Having reviewed all aspects of the Set, 10 years after its adoption,

Reaffirming the importance of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices ("the Set") adopted by the General Assembly in its resolution 35/63 of 5 December 1980,

Further reaffirming the need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries,

Recalling the agreement in the Final Act of the seventh session of the United Nations Conference on Trade and Development, paragraph 105 (18), to continue and strengthen the ongoing work in UNCTAD in respect of restrictive business practices, particularly with a view to ensuring transparency and to defining consultation procedures, and to continue the UNCTAD technical assistance programme in the field of restrictive business practices,

Decides that the implementation of the Set should be strengthened and to this end:

1. Expresses concern at the continued existence of restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, and calls upon States to implement fully all provisions of the Set in order to ensure its effective application;

2. Considers that one of the important means of achieving this goal is the adoption and effective enforcement of national restrictive business practices legislation and that the increasing number of countries which have taken such action since the First Review Conference is an encouraging development, and therefore calls upon all States to adopt, improve and effectively enforce appropriate legislation and to implement judicial and administrative procedures;

3. Suggests to this end that:

(a) States without any legislation to control restrictive business practices may wish to request information on restrictive business practices legislation and seek consultations with developed and developing countries which have experience of introducing such laws, as well as appropriate technical assistance. The latter may consist of introductory seminars directed at an audience which would include government officials and academics, as well as business and consumer-oriented circles;

(b) States which are in the process of drafting restrictive business practice legislation or have recently done so may wish to request information on restrictive business practice legislation and consultations with countries having experience of such laws, as well as technical assistance. This may consist of advisory services and assistance, training workshops and seminars for national officials for implementing restrictive business practice control legislation and on-the-job training with restrictive business practice control authorities in countries having experience in restrictive business practice control;

(c) States which have already adopted such legislation and seek to enforce those laws more effectively, as well as all other States, may wish to seek information or consultations with other countries on general matters of restrictive business practice legislation, issues of importance to restrictive business practice authorities in actual enforcement and specific restrictive business practices cases. Such States may also seek appropriate technical assistance;

(d) Any State so addressed should give full and sympathetic consideration to such requests and supply such publicly available information, and, to the extent consistent with their laws and established public policy, other information;

Information

4. Considers that, in the light of States' needs for information, a list of RBP authorities through which requests for information should be channelled is a useful device for increasing the flow of information, and requests the Secretary-General of UNCTAD to issue a directory of restrictive business practices authorities and to update it regularly;

5. Considers further that it would be helpful for States requesting information to have guidance and requests the Secretary-General of UNCTAD to prepare an indicative checklist of items which may include inter alia:

(a) A description of the restrictive business practice case in question;

(b) The enterprises involved;

(c) The legal basis for instituting proceedings;

(d) The reasons for requesting the information;

(e) The specific information sought;

(f) The intended use of the information.

6. Requests, on the basis of paragraphs 2 and 3 of section F of the Set, that:

(a) States supply to the UNCTAD secretariat annually or as the information becomes available if appropriate, preferably in one of the official languages of the United Nations:

(i) Information concerning new restrictive business practice legislation or amendments to existing laws, with a copy of the legislation or amendments;

(ii) A report on their activities concerning the control of RBPs including details of the more important cases dealt with, as provided for in section F, paragraph 3 of the Set;

(iii) Any relevant studies, guidelines or reports on restrictive business practices matters or details thereof which they may have published;

(b) The UNCTAD secretariat, on the basis of the information received and of other available information:

(i) Maintain its data base and make it available to States upon request;

(ii) Disseminate this information through appropriate publications;

(iii) Complete and update the Handbook on restrictive business practices legislation.

Consultations

7. Considering that the existing provisions of the Set provide a good basis for consultations, emphasizes the importance of section F, paragraph 4 of the Set and, in order to improve implementation of the Set in this respect, requests the UNCTAD secretariat to prepare a checklist of possible steps which countries may wish to follow in the preparation of a case, and in their request for consultation. Such a checklist could include, inter alia, explaining the reasons for the request for consultations, and indicating the specific details of the behaviour or activity about which the consultation is requested;

8. Recommends that, following a request for consultation, the State addressed should take whatever action it considers appropriate, including action under its legislation on restrictive business practices or administrative measures, on a voluntary basis and considering its legitimate interests;

9. Considers that the multilateral consultations, discussions and exchanges of views that have taken place under section G, paragrah 3 (a) of the Set among restrictive business practices experts at sessions of the Intergovernmental Group of Experts on Restrictive Business Practices have provided a useful forum for consideration of particular restrictive business practices issues and have served to establish important contacts between experts from interested countries, and requests the Intergovernmental Group of Experts to serve as a forum for exchanges of information and consultations at each of its sessions. Topics should be selected in advance of each session and time made available for the discussions;

Technical assistance

10. Recognizes the importance of both bilateral and multilateral technical assistance as an important way to secure the implementation of the Set. Both types of technical assistance are especially effective in introducing large groups of officials from several countries to basic restrictive business practices control principles and have been very effective in providing in-depth technical co-operation between restrictive business practice control authorities, particularly where it can be tailored to specific needs;

11. Notes the commitment of States members of Group B to continue to provide technical assistance on both a bilateral and multilateral basis, subject to the availability of resources and tailored to the requirements of individual countries or groups of countries;

12. Concludes that the UNCTAD secretariat's proposals for a framework for technical assistance in its report TD/RBP/CONF.3/4 contain useful elements. In order to facilitate a meaningful evaluation of the secretariat's proposed framework, the secretariat should suggest priorities from among the different types of technical assistance set out in paragraph 71 of its report and taking into account the three categories of countries requesting assistance identified in paragraph 3 above;

13. Requests the UNCTAD secretariat to take into account the costs of the various types of technical assistance and the most effective use of resources and to undertake a regular evaluation of its technical assistance activities in order to determine their effectiveness;

14. Invites the UNCTAD secretariat to continue organizing national, regional and subregional seminars, workshops and symposia, as appropriate, including with respect to regional grouping of States willing to adopt restrictive business practices control systems;

15. Urges intergovernmental organizations and financing programmes, in particular the United Nations Development Programme (UNDP), to provide the necessary resources for the activities mentioned above;

16. Appeals to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of the activities mentioned above;

Review procedure

17. Recommends to the General Assembly that a Third Review Conference be convened in 1995.

6th (closing) meeting
7 December 1990

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